MONTANA LEGISLATIVE HISTORY

Chapter 282 1991

Bill H _____ SB 261 Original bill & history ✓ C

H. Committee on Local Government			S. Committee on Local Government		
Hearing Date(s)	3-11	C	Hearing Date(s)	2-12	C
	_____	C		2-14	C
	_____	C		_____	C
	_____	C		_____	C
Date Out	3-13	C	Date Out	2-14	

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

3/04	REFERRED TO HUMAN SERVICES & AGING		
3/12	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/15	REREFERRED TO APPROPRIATIONS		
4/04	HEARING		
4/04	TABLED IN COMMITTEE		

SB 260 INTRODUCED BY AKLESTAD, ET AL.
PROHIBIT SMOKING ON NONCHARTERED INTRASTATE BUSES

2/02	INTRODUCED		
2/04	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/04	FIRST READING		
2/13	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED		
2/15	2ND READING PASSED AS AMENDED	36	10
2/16	3RD READING PASSED	39	10
	TRANSMITTED TO HOUSE		
2/18	FIRST READING		
2/18	REFERRED TO HUMAN SERVICES & AGING		
3/14	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/16	2ND READING CONCURRED	73	17
3/18	3RD READING CONCURRED	71	26
	RETURNED TO SENATE		
3/23	SIGNED BY PRESIDENT		
3/23	SIGNED BY SPEAKER		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 281	EFFECTIVE DATE: 7/01/91	

SB 261 INTRODUCED BY LYNCH, ET AL.
REVISE LAW RELATING TO CONSOLIDATED GOVERNMENT AND MUNICIPAL WATER SUPPLY SYSTEMS

2/02	INTRODUCED		
2/04	REFERRED TO LOCAL GOVERNMENT		
2/04	FIRST READING		
2/12	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/16	2ND READING PASSED	48	0
2/18	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO LOCAL GOVERNMENT		
3/11	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED		
3/16	2ND READING CONCURRED	92	1
3/18	3RD READING CONCURRED	92	4
	RETURNED TO SENATE		
3/22	SIGNED BY PRESIDENT		
3/23	SIGNED BY SPEAKER		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 282	EFFECTIVE DATE: 10/01/91	

SB 262 INTRODUCED BY WILLIAMS, ET AL.
ALLOW COUNTY COMMISSIONERS TO SET INTEREST RATE FOR TAX-DEED SALES

2/02	INTRODUCED		
2/04	REFERRED TO TAXATION		
2/04	FIRST READING		
2/12	HEARING		

SENATE BILL NO. 261

INTRODUCED BY LYNCH, HALLIGAN, JACOBSON, STIMATZ, PIPINICH, FRITZ, DAILY, WHALEN, HARRINGTON, QUILICI, KADAS, BROOKE, DRISCOLL, COCCHIARELLA, MENAHAN, MCCARTHY, REAM, SQUIRES, HARPER, MANNING, PINSONEAULT, PAVLOVICH

IN THE SENATE

FEBRUARY 2, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT.
FEBRUARY 4, 1991	FIRST READING.
FEBRUARY 15, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 16, 1991	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 18, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT.
	FIRST READING.
MARCH 14, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 16, 1991	SECOND READING, CONCURRED IN.
MARCH 18, 1991	THIRD READING, CONCURRED IN. AYES, 92; NOES, 4.
	RETURNED TO SENATE.

IN THE SENATE

MARCH 19, 1991	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

CHAIRMAN--ESTHER BENGTSON
NORMAL SCHEDULE==> SITE: ROOM 405 DAYS: T,TH,S TIME: 3:00 P.M.

SECRETARY-JOYCE INCHAUSPE-CORSEN

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0261	2/04	2/12		PASS AS AMENDED		2/15
LYNCH, J.D.			REVISE LAW RELATING TO CONSOLIDATED GOV'T & MUNICIPAL WATER SUPPLY SYSTEMS			
SB0276	2/06	2/14		PASS AS AMENDED		2/15
FRITZ, HARRY			PARTIAL SALARY FOR FIREFIGHTER INJURED IN PERFORMANCE OF DUTY			
SB0302	2/07	2/19		ADVERSE RPT ADOPT		2/22
BIANCHI, DON			GENERALLY REVISE LAWS RELATING TO COUNTY ROADS			
SB0305	2/07	2/19		DO PASS		2/22
ANDERSON, JR., JOHN			ALLOW MULTIJURISDICTIONAL SERVICE DISTRICT TO PROVIDE AMBULANCE SERVICE			
SB0328	2/08	2/14		TABLED ON 02/21		
PIPINICH, BOB			ALLOW COLLECTION OF SEWER AND WATER ASSESSMENTS WITH GENERAL TAXES			
SB0334	2/08	2/19		DO PASS		2/22
HARDING, ETHEL			REVISE PERSONAL LIABILITY FOR COUNTY OFFICIALS WHO EXCEED BUDGETS			
SB0367	2/13	2/19		DO PASS		2/20
CRIPPEN, BRUCE			AUTHORIZE PROPERTY TRANSFER TO YELLOWSTONE ART CENTER FOUNDATION			
SB0405	2/16	2/19		TABLED ON 02/19		
BLAYLOCK, CHET			INTERLOCAL COURT AGREEMENT			
SB0407	2/16	2/19		PASS AS AMENDED		3/18
WATERMAN, MIGNON			CLARIFY THE DEFINITION OF "PUBLIC WATER SUPPLY SYSTEM"			
SB0413	2/18	2/19		TABLED ON 02/21		
FRANKLIN, EVE			COST OF LIVING RATE INCREASES FOR MUNICIPAL UTILITIES			
SB0437	2/19	2/19		PASS AS AMENDED		2/22
BROWN, BOB			ALLOW LOCAL GOVERNMENT TO SET FEES FOR LAKE-RELATED CONSTRUCTION PERMITS			

SENATE BILL NO. 261

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW RELATING TO CONSOLIDATED GOVERNMENT AND MUNICIPAL WATER SUPPLY SYSTEMS; PROVIDING THAT A CONSOLIDATED LOCAL GOVERNMENT MAY SUPPLY SANITARY SEWER OR STORM SEWER SERVICES OR WATER TO A DISTRICT; PROVIDING THAT A CONSOLIDATED LOCAL GOVERNMENT OR A CITY OR TOWN COUNCIL MAY PURCHASE A PRIVATE WATER SUPPLY SYSTEM OR TAKE THE SYSTEM BY EMINENT DOMAIN; PROVIDING THAT THE PASSAGE OF AN ORDINANCE OR RESOLUTION PROPOSING THE TAKING IS CONCLUSIVE ON THE ISSUE OF NECESSITY FOR THE TAKING OF A SYSTEM; AND AMENDING SECTION 7-13-4403, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Definitions. As used in [sections 1 through 34], the following definitions apply:

(1) "District" means a district authorized in [section 2] to provide a system.

(2) "Local government" means a consolidated form of local government provided for in Title 7, chapter 3, parts 11 through 13.

(3) "System" means a public water supply, sanitary sewer system, storm sewer system, or any combination of water supply, sanitary sewer, or storm sewer systems.

NEW SECTION. **Section 2.** Authorization to create district. Whenever the public convenience and necessity may require, in order to construct a water supply, sanitary sewer, or storm sewer system within a local government that would serve the inhabitants of the local government, the governing body may create a district to provide the system.

NEW SECTION. **Section 3.** Resolution of intention to create district. (1) Before creating a district, the governing body shall pass a resolution of intention to create the district.

(2) The resolution must designate:

(a) the proposed name of the district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands to be included within the district, giving the boundaries of the district;

(d) the general character of the system and its proposed location;

(e) the name of the engineer who is to have charge of the work; and

(f) the estimated cost of the district.

NEW SECTION. **Section 4.** Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of

INTRODUCED BILL
SB 261

intention and notice of improvements, it is sufficient to briefly describe the work or the district and to refer to the resolution of intention for further particulars.

NEW SECTION. **Section 5.** **Notice of resolution of intention upon concurrence -- hearing.** (1) The governing body shall give notice of the passage of its resolution of intention to create the district.

(2) The notice must be published for 10 consecutive days in a daily newspaper published nearest to the place where the district is to be created. The governing body shall also cause a copy of the notice to be posted in three public places within the boundaries of the district. A copy of the notice must be mailed to every person, firm, or corporation or the agent of the person, firm, or corporation owning property within the proposed district, at his last-known place of residence, upon the same day the notice is first published or posted.

(3) The notice must describe the general character of the improvement or improvements proposed to be made, state the estimated cost, and designate the time when and the place where the governing body will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district. The notice must refer to the resolution on file in the office of the local government clerk for the description of the

boundaries.

NEW SECTION. **Section 6.** **Right to protest.** (1) At any time within 30 days after the date of the first publication of the passage of the resolution of intention, any owner of property liable to be assessed for the system may make written protest against the proposed system.

(2) The protest must be in writing and be delivered to the county clerk, who shall endorse on the protest the date of the receipt.

NEW SECTION. **Section 7.** **Sufficient protest to bar proceedings.** If protests against the proposed system are received from the owners of 50% or more of the area in the proposed district, further proceedings may not be taken by the governing body.

NEW SECTION. **Section 8.** **Hearing on protest.** (1) At the next regular meeting of the governing body after the expiration of the time within which protest may be made, the governing body shall hear and pass upon all protests, and its decision is final and conclusive.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings, property owned by local government and school districts is considered the same as any other property in the district.

(3) The governing body may adjourn the hearing from

time to time.

NEW SECTION. **Section 9.** **Resolution creating district -- power to order improvements.** (1) Before ordering any of the proposed improvements, the governing body shall pass a resolution creating the district in accordance with the resolution of intention introduced and passed by the governing body.

(2) The governing body has jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest is found by the governing body to be insufficient; or

(c) when a protest is overruled.

NEW SECTION. **Section 10.** **Governing body to administer district.** (1) The members of the governing body are ex officio commissioners of the district formed under the provisions of [sections 1 through 34] and have jurisdiction over the system within the district. The governing body is responsible for the proper functioning and maintenance of the system.

(2) The governing body is responsible for the condition and maintenance of all publicly owned roads, streets,

alleys, land, parks, or other thoroughfares within the boundaries of the district affected by the construction or maintenance of the structures under control and jurisdiction of the district.

NEW SECTION. **Section 11.** **Change of boundaries -- limitations.** (1) The governing body may by resolution make changes in the boundaries of a district as they consider reasonable and proper but may not delete any portion of the proposed area if the deletion will create an island of included or excluded lands.

(2) The governing body may not delete any portion of the proposed area that is contributing or may reasonably be expected to contribute to the pollution of any watercourse or body of water in the proposed area.

(3) For the purpose of subsection (2), it is conclusively presumed that an area that is within 1,500 feet of a proposed or existing sanitary sewer is contributing to the pollution of a watercourse in the proposed area.

NEW SECTION. **Section 12.** **Applicable provisions of laws relating to rural improvement districts.** The provisions of 7-12-2101, 7-12-2106, 7-12-2107, 7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), 7-12-2169, and 7-12-2171 through 7-12-2174 pertaining to rural improvement districts apply to [sections

1 1 through 34] unless in conflict with the provisions of
2 [sections 1 through 34].
3 NEW SECTION. **Section 13.** Adequate records to be
4 maintained. The records of the district pertaining to the
5 collection of the operation and maintenance tax levied and
6 the records of the district pertaining to expenditures for
7 construction of the system must be kept and maintained in
8 the office of the treasurer of the local government where
9 the district is located. These records must include but not
10 be limited to a list of individual property that is
11 delinquent in payment, together with the name of the owner
12 or owners of the property.
13 NEW SECTION. **Section 14.** Assessment of costs. To
14 defray the cost of installing and maintaining the system
15 under the provisions of [sections 1 through 34], the
16 governing body shall adopt the following method of
17 assessment:
18 (1) The governing body shall assess the entire cost of
19 the improvements against the entire district.
20 (2) Each lot or parcel of land assessed in the district
21 is to be assessed with that part of the whole cost that its
22 area bears to the area of the entire district, exclusive of
23 streets, avenues, alleys, and public places.
24 NEW SECTION. **Section 15.** Status of federal property
25 within district. Whenever any lot, piece, or parcel of land

1 belonging to the United States fronts upon the proposed work
2 or improvement or is to be included within the district the
3 governing body shall in the resolution of intention declare
4 that the lots, pieces, or parcels of land must be omitted
5 from the assessment to be made to cover the cost and
6 expenses of the work or improvement, and the cost of the
7 work or improvement in front of the lots, pieces, or parcels
8 of land must be paid by the local government from its
9 general fund.
10 NEW SECTION. **Section 16.** Restriction on assessments
11 following change of boundaries. Nothing in [section 11]
12 permits the assessment of the cost of the system against the
13 lands remaining in the district after a boundary change at a
14 higher rate per square foot than the rate per square foot
15 that would have been assessed if the entire cost of the
16 improvements as estimated in the resolution of intention had
17 been assessed against each lot and parcel of land included
18 within the boundaries of the district as described in the
19 resolution of intention unless a new resolution of intention
20 to recreate the district is adopted and a hearing is held on
21 the new resolution after notice as required for the original
22 resolution of intention.
23 NEW SECTION. **Section 17.** Resolution to assess and levy
24 tax for making improvements. (1) To defray the cost of
25 making improvements in the district, the governing body

shall by resolution levy and assess a tax upon all property in the district created for the purpose of the system by using as a basis for the assessment the method provided for by [sections 1 through 34].

(2) The resolution must contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment when made and the day when the payment becomes delinquent.

(3) The resolution, signed by the governing body, must be kept on file in the office of the local government clerk.

NEW SECTION. **Section 18.** **Term of assessment for costs of construction.** The payment of the assessment to defray the cost of constructing any improvements in the district may be spread over a term of not more than 20 years, with payment to be made in equal installments.

NEW SECTION. **Section 19.** **Notice of resolution to assess and levy tax for making improvements -- protest.** (1) A notice, signed by the local government clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the clerk and is subject to inspection, must be published at least once in a newspaper published nearest to where the special improvement is to be made.

(2) The notice must state the time and place in which objections to the final adoption of the resolution will be

heard by the governing body.

NEW SECTION. **Section 20.** **Hearing on protest.** (1) The time for the hearing on protest must be not less than 5 days after the publication of the notice required by 7-13-126.

(2) At the time fixed, the governing body shall meet and hear all objections and for that purpose may adjourn from day to day. The governing body may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the clerk of the local government, must be delivered to the local government treasurer within 2 days after its passage.

NEW SECTION. **Section 21.** **Assessments and other charges as lien.** A special assessment made and levied to defray the cost and expenses of the work for the system, together with any percentages imposed for delinquency and for cost of collection, are a lien upon the property upon which the assessment is made and levied, from and after the date of the passage of the resolution levying the assessment. The lien may only be extinguished by payment of the assessment, with all penalties, costs, and interest.

NEW SECTION. **Section 22.** **Charges for services.** (1) The governing body may by ordinance or resolution establish just and equitable rates, charges, and rentals for the services and benefits directly or indirectly afforded by a system operated by, controlled by, and under the jurisdiction of a

district formed under [sections 1 through 34].

(2) The rates, charges, and rentals must be as nearly as possible equitable in proportion to the services and benefits rendered and may take into consideration the quantity of water supplied, the amount of sewage produced and its concentration, water pollution qualities in general, and the cost of disposal of sewage and storm waters.

NEW SECTION. **Section 23. Authorization to use federal funds.** The governing body may apply for and receive from the federal government, on behalf of the district, any money that may be appropriated by congress for aiding in local public works projects. The governing body may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects and repay the loan out of the money received from the tax levy provided for in this part.

NEW SECTION. **Section 24. Charges for costs when federal funding is sought.** Notwithstanding any other section of [sections 1 through 34] or a limitation imposed in [sections 1 through 34], when the governing body has applied for funds pursuant to [section 23], the governing body may adopt a system of charges and rates to require that each recipient of services pays its proportionate share of the costs of operation, maintenance, and replacement and to require industrial users of services to pay that portion of

the cost of construction of the system that is allocable to the industrial user.

NEW SECTION. **Section 25. Resolution to establish service charges -- hearing -- limitations and tax levy.** The governing body may, subject to the provisions of Title 69, chapter 7, by resolution and after public hearing:

(1) establish the rates, charges, and rentals in amounts sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) establish an additional charge for the operation and maintenance of a system and a plant; and

(3) levy and assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements in the district, not in excess of 2 mills on each dollar of taxable valuation, to provide sufficient revenues for the reserve fund in the amounts necessary to meet the financial requirements of the fund as described in [sections 28 through 33].

NEW SECTION. **Section 26. Hearing and notice on tax levy for operation and maintenance.** (1) Not less than 30 days prior to the date of making the levy for operation and maintenance of the system, the governing body shall hold a public hearing on the resolution.

(2) Notice clearly setting forth the subject matter of

the hearing must be given by the governing body by publication as provided in 7-1-2121, and notice must also be posted in three public places within the district.

NEW SECTION. **Section 27. Preparation and filing of district budget.** (1) Not less than 30 days prior to the date of the public hearing on the resolution, the governing body shall prepare and file in the office of the clerk of the local government in which the district is located and in the office of the governing body a complete, detailed budget for operation and maintenance of the system, showing all income and expenditures for the year prior to the hearing and all estimated income and expenditures for the next ensuing year in which the levy is assessed.

(2) The provisions of law relating to local government budgets and expenditures must be complied with by the district.

NEW SECTION. **Section 28. Authorization for reserve fund.** The governing body may, in order to secure prompt payment of any district bonds issued in payment of the cost of improvements for the district and the interest on the bonds as it becomes due, create, establish, and maintain by resolution a fund, to be designated as the "reserve fund", for each issue of bonds.

NEW SECTION. **Section 29. Sources of money for reserve fund.** (1) For the purpose of providing money for the reserve

fund, the governing body may in its discretion, from time to time, transfer to the reserve fund from the operation and maintenance fund of the district an amount as may be considered necessary or as may be agreed upon with the holders of the bonds.

(2) Whenever there is money in the bond fund that is not required for payment of a bond of the district or interest on the bond, as much as is necessary to pay the loan referred to in [section 31] must, by order of the governing body, be transferred to the reserve fund.

NEW SECTION. **Section 30. Transfers to reserve fund considered as loans.** The amount or amounts transferred under [section 29] must be considered as loans from the operation and maintenance fund to the reserve fund.

NEW SECTION. **Section 31. Loans from reserve fund to bond fund as lien.** (1) Whenever a loan is made to the bond fund from the reserve fund, the reserve fund has a lien for the amount of the loan on:

(a) the land within the district that is delinquent in the payment of its assessments;

(b) unpaid assessments and installments of assessments on the district, whether delinquent or not; and

(c) money coming into the bond fund to the amount of the loan, together with interest on the loan from the time it was made at the rate or percentage payable by the bond or

of interest on the bond for which the loan was made.

(2) If after all the bonds of the district have been fully paid and all money remaining in the bond fund has been transferred to the reserve fund, there still remains a debt from the district to the reserve fund, the governing body may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off the loan to the reserve fund.

NEW SECTION. **Section 32. Limitation on repayment of loan to reserve fund.** Nothing in [sections 28 through 33] permits the repayment of a loan to the reserve fund at any time unless all interest accrued on the bonds has been fully paid and all principal agreed to be paid in accordance with the redemption schedule as may be provided in the resolution or resolutions authorizing the bonds has been paid.

NEW SECTION. **Section 33. Covenants to use and maintain reserve fund.** (1) In connection with the issuance of district bonds, the governing body may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the reserve fund to the fund maintained for the payment of the bonds in amounts sufficient to make good any deficiency in the bond and interest accounts to the extent that money is available; and

(b) to provide money for the reserve fund pursuant to the provisions of [sections 22 and 25] by establishing and

collecting rates, charges, and rentals for services and benefits in amounts sufficient to provide net revenues in excess of the current costs of operation and maintenance of the system and sufficient to maintain a balance in the reserve fund as the governing body may agree to and undertake.

(2) The undertakings and agreements authorized by subsection (1) are binding upon the local government as long as any bonds or any interest on the bonds remains unpaid.

NEW SECTION. **Section 34. Acquisition of private water supply system.** (1) If a franchise has been granted to or a contract made with any person or corporation and the person or corporation has established or maintained a system of water supply or has valuable water rights or a supply of water desired by the district for supplying the district with water, the governing body granting the franchise, entering the contract, or desiring the water supply shall, by the passage of a resolution, give notice to the person or corporation that it desires to purchase the plant, franchise, or water supply of the person or corporation.

(2) The governing body passing a resolution as provided in subsection (1) may:

(a) purchase the plant, franchise, or water supply upon terms agreed to by the parties; or

(b) take the plant, franchise, or water supply by

eminent domain.

(3) A resolution that authorizes the taking of private property for purposes of supplying the district with water is conclusive as to the necessity for the taking, except with respect to a water supply system used for irrigation of agricultural crops or for livestock purposes. The taking must conform to and be conducted as provided in Title 70, chapters 30 and 31.

Section 35. Section 7-13-4403, MCA, is amended to read:

"7-13-4403. Acquisition of private water supply system. (1) ~~It is provided that whenever~~ If a franchise has been granted to or a contract made with any person or ~~persons, corporation, or corporations~~ and ~~such~~ the person or ~~persons, corporation, or corporations, in pursuance thereof or otherwise, have~~ has established or maintained a system of water supply or ~~have~~ has valuable water rights or a supply of water desired by the city or town for supplying the city or town with water, the city or town granting ~~such~~ the franchise, ~~or~~ entering ~~in such~~ the contract, or desiring ~~such~~ the water supply shall, by the passage of an ordinance, give notice to ~~such~~ the person or ~~persons, corporation, or corporations~~ that it desires to purchase the plant, and franchise, ~~and~~ or water supply of ~~such~~ the person or ~~persons, corporation, or corporations~~.

(2) The city or town ~~shall have the right to~~ ~~so~~ passing

an ordinance as provided in subsection (1) may:

(a) purchase the plant or water supply upon ~~such~~ terms ~~as~~ agreed to by the parties ~~agree~~; or

(b) take the plant, franchise, or water supply by eminent domain if the plant, franchise, or water supply is to be used for a municipal water system.

(3) An ordinance that authorizes the taking of private property for purposes of supplying the city or town with water is conclusive as to the necessity for the taking, except with respect to a water supply system used for irrigation of agricultural crops or livestock purposes. The taking must conform to and be conducted as provided in Title 70, chapters 30 and 31."

NEW SECTION. **Section 36.** Codification instruction. [Sections 1 through 34] are intended to be codified as an integral part of Title 7, chapter 13, and the provisions of Title 7, chapter 13, apply to [sections 1 through 34].

-End-

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Vice Chairman Eleanor Vaughn, on February 12, 1991, at 3:20 p.m.

ROLL CALL

Members Present:

Eleanor Vaughn, Vice Chairman (D)
Thomas Beck (R)
Dorothy Eck (D)
H.W. Hammond (R)
Ethel Harding (R)
John Jr. Kennedy (D)
Gene Thayer (R)
Mignon Waterman (D)

Members Excused: Esther Bengtson, Chairman (D)

Staff Present: Connie Erickson (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Senator Vaughn turned the chair over to the senior member of the committee, Senator Eck.

HEARING ON SB-224

Presentation and Opening Statement by Sponsor: Senator Vaughn, District #1, Lincoln County, opened by stating that she was carrying this bill for the Department of Health and Environmental Sciences. She read the bill. In many of the areas there are real difficult air quality problems, and the Federal and State Government are finding it necessary to establish rules and regulations to operate these. Right now it is very difficult for local governments to set up programs that they can manage themselves. This bill would allow them the authority to control these programs. There are some amendments being purposed that will make this bill comply with the Federal Regulations, and there are proponents from the local air quality board who will explain them.

petition drive over 15 years ago. They do a lot of air monitoring, some work in road dust, and they may do some additional work with regard to carbon monoxide in the future. This would probably not change anything for them. They are already receiving state and federal aid at this time. Senator Eck asked if it would limit their ability to monitor the large plants? Mr. Raisch said that the Board of Health is the one who monitors large facilities, not this local control district. They have some smaller industrial facilities like the grain mills and asphalt plants that they issue permits on and do enforcement and the inspection. The large ones like the refineries and power plants are under the Department of Health and Environmental Sciences. The board withheld authority for those large sources when they approved those programs years ago. This bill would put what the board has done in the past into the statutes.

Closing by Sponsor: Senator Vaughn said that she felt the committee had a good discussion of the bill. She said the local governments were not interested in trying to control the big sources like the mines, mills, and refineries. They want to get a handle on these smaller problems before the Federal Governments says they have to. She has no reason to feel the amendments would not be acceptable. She asked the committee to look favorably on SB-224 as amended.

Senator Vaughn took over the chair after the hearing on SB-224.

HEARING ON SB-261

Presentation and Opening Statement by Sponsor: Senator J.D. Lynch, District 34, said that has been four years since he brought a water bill before this committee. He successfully brought legislation that dealt with the two major water companies that are here today. That bill was ultimately brought to the 9th Court of Appeals in San Francisco to prove it unconstitutional. He wanted to report to the committee, that their diligence in passing the legislation was proved to be constitutional and was upheld 3-0 by the 9th Circuit Court of Appeals. SB-261 is a different matter. It is a bill, that many people hope will never have to be utilized. It provides the ultimate taking over the

responsibilities of the water companies involved. He could relate the many horror stories of the problems in the Butte and Anaconda area and the water company there. For close to a year, they were unable to drink any of the water they were paying for. Hundreds of thousands of dollars were spent by members of his community for bottled water. As a father of a three year old, you wouldn't dare let a child drink the water that was condemned. In fact the schools were told to shut off their drinking fountains because it simply was not fit for human consumption. Yet, along with paying the water bills, the people had to buy additional water in order to survive. So we have problems with the Butte water system. We had hoped and the Butte Water Company tried to find financing of $40 million dollars to get the system caught up. The financing is apparently not going to be available. There is a suit going on, where people have sued for the lack of service. SB-261 is an attempt to prepare ourselves for the time may occur and looks inevitable in his mind, when the local governments in Butte-Silver Bow situation will in fact have to take control of the water company. Realizing they will pay a fair market value, and then will have to go to bonding or improvement districts to try to improve the lines that were left in disrepair for past 40 years. This is not a pleasant situation to have to pay that amount of money, but his own feeling is that if they have to pay this amount, it is better to own it than to foot the bill for someone else. He understands that there are several proponents and opponents to the bill.

Proponents' Testimony: Jack Lynch, Chief Executive, Butte-Silver Bow, said that they have a horrible problem with their water system, and it is a problem that they have attempted to address by meeting with the PSC, the Butte Water Company, and the local constituents. If Butte-Silver Bow does end up in ownership of the water system there are two things that this bills does that are critical to the city and county of Butte. If they do end up as proprietor of the water company, it would allow Butte-Silver Bow to establish the water district with lines that co-exist with the current metro-sewer lines. This would avoid any disruption of service. Secondly it includes consolidated city/county governments. All of the legislation now refers to a city or a county. As the only two consolidated city/county governments in Montana, this bill would include us in the statutes that currently exist. This is our intent. We hope through amicable means we will be able to resolve the problems we have. In the event that the problems are resolved, or the water is not interested in maintaining its proprietary interests this bill gives us the vehicle to continue to deliver water to the people of Butte-Silver Bow.

Dan Kemmis, Mayor of Missoula, said that only two areas do not own their own water, Missoula and Butte, and this bill addresses this in two different ways. Mr. Lynch described one section. The other portion would change the eminent domain law in Montana specifically where it applies to the acquisition of municipal water systems. It would provide that in the acquisition of the municipal water system, that by passing a resolution of intention to acquire, that the issue of necessity of the acquisition would be conclusively settled by the passage of the resolution. What this means is that there would be a recognition in the state law that municipal water systems are necessary to the existence of cities. No one here would doubt that. The current law requires that a city has to prove the value of the system and it has to prove that it is a necessity. We do not want to change the proof of value, but change it so it is not necessary to prove necessity. Water is necessary, but it is difficult to prove. The concern is that the Missoula might be the only city in the state that does not own its water system. This is not a bad thing under current circumstances. We have a good water company that is well managed. His concern is that you can not count on the current management lasting forever. The city has to look forward to the possibility of the management changing or circumstances changing. The city might find that it needs to be in the position of every other city in Montana, aside from Butte-Silver Bow, and that is to acquire their water system. Without the change in the law of eminent domain, it is simply not possible for Missoula to do. All we ask is that we be put in a position of parity. One reason that parity is important is the Big Sky Dividend Program. The first type of expenditure listed in the Big Sky Dividend Program is for government owned municipal water systems. Whether that program is adopted, Missoula will not, or can not qualify because we don't own our own water system. Thus we are put at a severe disadvantage to acquire public funds for purposes of improving the system. Those are the reasons we ask for your support of SB-261.

Robert McCarthy, County Attorney, Butte-Silver Bow Local Government, and as the Chief Executive, Jack Lynch, mentioned before, the existing law that deals with what is called "metro-sewer districts" refers to operation of these districts by counties and boards of county commissioners. For fourteen years, in Butte-Silver Bow, we have operated a metro-sewer district that was created more than 25 years ago under the laws that apply to a form of government that we no longer have, and probably never will have again. So laws that refer to annual action taken by boards of county commissioners and refers to county commissioners doing certain things which we no longer have. So one of the new things set forth in this bill is to restate the existing

provisions in Montana law which are currently referred to as metro-sewer districts and would repeat these sections and provide that they be applicable only for city/county consolidated governments. In addition the bill would not refer to this district as a metro district, but refer to it just as a district. It would expand the authority to provide for treatment of sewerage as given to metro-sewer districts, but also provide for operation of water system and all the requisite duties that are attached to public water supply. This is common throughout the law, municipalities, through broad authority, have the ability to operate public water and sewer systems, and we could operate under that. This bill makes it simpler for us in the event that it is necessary for us to operate a public water system, we could operate it along with what is now called a metro district, but in the new bill it would be referred to as a district for provision of water and sewer services. This current metro district has definite boundaries, all the properties within the district are identified, evaluations are established, and separate records are kept for this property. There are crews available, equipment, and it would be simply to operate this combined services. It would seem difficult to provide service if we have to take over the municipal water system to the county at large, but this bill would provide that advantage in that this district already exists. This is also common in rural areas. The laws that deal with the operation of sewer systems in rural areas are called the county water and sewer law, so this simply provides for a system that is commonly in effect in either municipalities, populated areas, county water/sewer system in rural areas, or consolidated governments. This calls for some changes in language to take into account consolidated governments, and it would make for a system, if necessary, that could be done and the service provided to the public.

Alec Hanson, Montana League of Cities and Towns (MLCT), stated that he felt there was no municipal service that is more important than the provision of adequate, clean, safe drinking water. The purpose of the bill is to simply give Anaconda, Butte, and Missoula the authority to meet that challenge. The members of MLCT agree with this idea when they supported a resolution and this bill by unanimous vote at our convention last fall in Bozeman. Nothing should get into the way of the people of Montana and clean, safe, drinking water.

Vern Erickson, Montana State Fireman's Association (MSFA), and those are the firemen that are in the 1st and 2nd class cities. We urge the committee's concurrence in this bill.

<u>Opponents' Testimony:</u> Arvid M. Hiller, Mountain Water Company,

stated that he is glad to see that Senator Lynch and Mayor Kemmis made a differentiation between the first 15 pages of this bill, and two pages that deal with eminent domain. (Exhibit 6, 6A). Mr. Hiller stated that Missoula already has the first right of refusal if the Mountain Water Company decided to sell.

William Evan Jones, Partner, Garlington, Lohn & Robinson of Missoula, opposed the last two pages of SB-261 that dealt with changing the eminent domain law. (Exhibit #7). He has represented condemnation from both sides. He presented a copy of the court case that Mountain Water Company won against the City of Missoula and their condemnation case. (Exhibit 7A)

Doug Harrison, Employee, Mountain Water Company, as Customer Service Supervisor, and also a Missoula City Councilman, addressed only the amendments. (Exhibit #8).

Dennis Lind, Washington Corporation based in Missoula and Butte Water Company, opposes the last two pages of this bill that deal with condemnation and eminent domain. The first portion of the bill and the creation of the water districts for the cities of Butte and Anaconda are appropriate. He agreed with both Senator and Executive Manager Lynch that there is a need for this kind of concentration of ownership within a county. This would be advantageous to Mr. Washington and the Butte Water Company if they took over the water company, but at this particular time with the various legal issues and practical considerations this is not possible. We do not oppose the creation of the water districts, but we do not think it is appropriate to change the traditional condemnation procedures as they exist historically in the state of Montana and throughout the United States. Provision that are on the last two pages of the bill speak conclusively saying that a resolution or ordinance is conclusive to necessity. What about the individual property rights? What about the concerns our Governor has expressed about privatization and the economies provided by that? If there truly is a need to take over the system, then that necessity will not be difficult to prove. This is like having the fox in the hen house. Why is it appropriate to a local government body to make the determination that there is no necessity, that there is conclusive evidence of necessity, without allowing the private owners of that entity to present themselves to an independent arbitrator for determination of what is fair and in the best interest of the public. He submitted that the last two pages of the bill be deleted, and they only oppose that section of the bill that speaks to condemnation and eminent domain.

Lauren Frank, Montana Farm Bureau (MFB), and we oppose pages 17

and 18 of this bill which you have heard quite a bit of testimony on. We are very concerned with the taking of private property. If the committee will delete those pages, then the MFB could support this bill.

Bruce Suernram, Missoula Rural Fire District, brings a different perspective to this issue. They have dealt with Missoula trying to annex fire districts, and see this as just another attempt through the back door. He concurred with the amendments offered (Exhibit #9).

James Lofftus, Montana Fire District's Association, and we oppose the bill as currently written. If the amendments offered by Mountain Water company are adopted we can support this bill.

Jack Fraxler, Missoula resident, opposed the last two pages of the bill. It is an infringement on private property. He spoke for the Montana School Bus Operators/Private Contractors. They felt if the cities can take a going proposition like Mountain Water Company, then who is next? If the precedent is set, it could happen. Some of Mayor Kemmis' remarks that we are one of two entities in the state that have private water, may be to our advantage. It has been that way since Missoula was founded. MPC did a magnificent job, and in 1979 the city of Missoula had the chance to buy it. Since then, the last four mayors have tried to get the water system. He hoped the committee would strike pages 17 and 18, and leave the rest of the bill.

Reba Falk, Ravalli County resident, sent a letter opposing the bill (Exhibit #10)

Questions From Committee Members:
Senator Eck asked Mayor Kemmis to what extent does this address the annexation problem and what reason does Missoula feel that they want the water? Mayor Kemmis said that this is separate from annexation issues. This is not an annexation tool. There concern is that Missoula be given the opportunity to do what all other cities, except Butte-Silver Bow, have done, and that is to own their water system. He added that the language about the conclusiveness of the finding of necessity has been borrowed from another section of state law that says the same thing in a number of other incidence. This is not something new, and it would not only apply to water companies alone. He was sorry he did not have the section it was taken from nor the list of other facilities that can be acquired this way.

Senator Beck had been looking diligently through the code books, and said that he hadn't found any resolution that you can use

eminent domain without proving the need and the necessity in the code book. This sounds perfectly logical that you should have to prove that. You should not be given the authority just by resolution to go take over a water company. How would Mayor Kemmis argue that Missoula needs this authority? Mayor Kemmis said that again he was sorry he did not have the section of the law that this was taken from, but he would supply it to the committee, so they have a list of other acquisitions that cities and towns can do in this exact manner proposed here. Then they can determine whether water systems should or should not be included in this list. There are a number of places that by simply passing a resolution you can show necessity. The law says in general, in order to condemn, you have to prove that the use is one which is authorized as a public use, and then with the acquisition, is necessary to that use. The difficulty with a water system, is figuring out how you ever prove, to the satisfaction of a judge, that it is necessary that you should own the water system. It does not appear to be enough to say that water is vital to life were the waters is vital to municipal existence. Missoula has tried that, and it is not enough. All we are asking, is that water systems be added to the list that already exists in state law where exactly this procedure is in place. He will provide that statute to the committee, so they can make those comparisons. Senator Beck asked Mayor Kemmis if he had the authority, at this time with the statutes as they are, and they could prove need and necessity that Missoula could evoke eminent domain to acquire a water system? Mayor Kemmis said if they could prove necessity then under the law now we could acquire the water by eminent domain. Missoula has tried to do that, and have failed to prove need and necessity. Senator Beck asked if the water system in Missoula is in such shape that you have a need to purchase that water system at the present time? Mayor Kemmis said no not at this time, but the last place he wants to be is in the position that Butte is in. None of you want to put us into the situation that the only time you can acquire a water system is when it is deteriorated so badly that it needs emergency attention. That is not the condition under which any other city acquired their water system. They got theirs in at the ground floor and that's the difference. That's the place the law seems to put us. In order to prove necessity, we would have to prove that things are in the shape they are in Butte. We can't prove that, but we never want to be in that position either.

Senator Thayer asked Mr. Lind why the Washington Corporation or Butte Water Company did not respond to the statement that the people of Butte had to buy bottled water? Mr. Lind said he did not respond to that statement. He is well aware, as well as the

residents in Butte, to the multitude of problems that exist with the water company there. Those are the result of many years of historical deterioration, lack of usage, and maintenance and repair. It is true that bottled water had to be brought in. The problem with the Butte Water Company is the massive number of dollars needed to bring it up to a standard, and who is responsible for that. This is a matter that is before the PSC and in the courts. He did not feel it was appropriate for him to respond.

Senator Harding asked Mayor Kemmis why if Mountain Water is doing such a good job, as he stated in his testimony, and they pay $3 million dollars in property taxes and payroll, why would he want to buy this company? Mayor Kemmis said that they did not want to buy at this time, but we want the ability by law to do it at a fair chance if it was determined to be necessary. Some reasons we think it might be necessary are: #1 has to do with the close relationship between an entire water system including the sewer system. The water drawn from the ground that goes through homes and businesses and then into the sewer. We have had difficulty in Missoula in being able to set sewer rates in a flexible way because our water usage is not metered. Because the water widely unmetered, we can not determine how much various residences are adding to the sewer system. If you own the water system, like most cities, you have it within your own control to decide whether to meter water systems. We in Missoula are dependent on a sole source aquifer. Prior to the time we relied on this aquifer, we relied heavily on surface water from Rattlesnake Creek. Many people feel that we need to protect and possibly reactivate that surface source. We can not force Mountain Water to do that. So we are left helpless in controlling domestic supply policy in Missoula. We are left to decision made by Mountain Water. By in large, Mountain Water makes good decisions, but for us to be left at the mercy of a private water system after watching what happened, it makes us nervous. So we would like to have the capacity to acquire that water system before a crisis occurs.

Senator Eck asked Mr. Hiller why Mountain Water does not meter the source of water? Mr. Hiller asked how metering 10,000 addresses will help, when they in fact acknowledged as recently as 2 weeks ago, that along where our lines run they do not know if 50% of the homes are connected or not. To address your question about metering. It is a matter of economics, and the best way to spend your money in relation to your consumers' dollars. The reference to the Rattlesnake water, in 1984 it cost 60 cents to each customer to make improvements to replace Rattlesnake water. If we were to build a filtration plant today,

at today's cost, it would cost each customer more than $6.70/month to build. He submitted that if they entered a metering program to meet all their flat rate accounts, and the PSC said it was more wise to repair leaks, which they have done over the last 10 years, then the PSC would determine it wasn't prudent use of money. Then to build a $7 million dollar water treatment plant that will increase the customer bill 1000% over what has been done, they would never allow it. Rattlesnake Creek in August, which is its most needed time, is at its lowest flow. It could not even supply 10% of what is needed. He asked what the wisdom of building a treatment plant, raise everyone's bill by $7/month, and not have the water when you needed. Senator Eck asked what the connection was between using surface water and having to put in a filtration plant, and the advise of putting in metering. Metering usually cuts down on the use of the water by residences. Mr. Hiller said that during the condemnation process and hearings that Mountain Water had to submit its budget every year while they were under the threat of condemnation for their approval. The last year under the threat, Mountain Water asked Missoula to permit them to go to a capital investment program of putting in 2,000 meters/year. The response at that time was no, we do not want to get involved with that. Senator Eck asked if that meant Mountain Water would consider meters? Mr. Hiller said that they have proposed meters before, and it is a prudent thing to do the most economical thing first. As we speak, Mountain Water is entering into contract to find out what the leak rate is across the system. In 1981 it was found to be more cost effective to repair leaks than it was to install meters. As soon as they get statistics on water loss, then they intent to propose meters. They do supply the city of Missoula with all the consumption of all the multiple line units to the businesses in Missoula. This is to assist them in coming up with sewer billing rates. We intend to mechanize this through computerization, and that flows right along with the line of cooperation the he is committed to with the city. We help them, and they help us to insure our community water is protected. It has to be done at the best rates for the consumer. Otherwise the PSC says it is not prudent and they will not pay for doing it.

Senator Beck asked Mr. Hiller if Mountain Water has a long range plan, and what they are looking at for the volume of water for Missoula? Do they expect any big increases in demand, and if so, do they have a plan to meet those increases? Mr. Hiller said that their long range plan is far reaching and includes finding the best source for water that will go beyond the demand. He has four children, and he is committed for at least the next 20 years until he retires, that Missoula has as good or better water. He only does this because his owner supports him in doing this.

Closing by Sponsor: Senator Lynch closed by saying that it was a fine hearing. He momentarily got upset when Mr. Lind, the lawyer from Missoula was telling us about the condition of the Butte Water Company. Then he remarked about the right's of property owners. He only thought about people's rights and his daughter's rights if we didn't have the ability to bring in bottled water. What about the poor kids' rights that no one gave a damn about for a year or more, that some kids were still drinking contaminated water from the Butte water system. The water company didn't give a damn, they didn't try to help out, they didn't give subsidies to those people that could not afford the bottled water, and they didn't reduce their rates because the water was filth. So he said he gets a little testy when people talk about property owners' rights versus small children's rights and the consumers' rights. In some instances, nothing was done to help the problem in Butte. Hundreds of thousands of dollars was spent on bottled water to keep our children healthy, virtually alive, rather than drink the filth that was coming from the taps of the Butte Water Company. He didn't remain angry, he cooled off! You have a decision before you in regards to the ability of allowing Missoula, which is going to be singled out, will be penalized by the Big Sky Dividend if it passes, and so will Butte-Silver Bow. At the time it passes, if we don't make arrangements to include all water systems, then Missoula and Butte will not have opportunity to receive funding. This may encourage all of us to look into changing that. That's a decision for the committee. He was not sure that a city should have a right to own their own water, but by the same token, he certainly understand that they should be guaranteed the fair market value. This committee will decide those issues. The rest of the bill is a clear need for us to be prepared, in the cases of consolidated governments in the event negotiations are conceived and can continue in an orderly matter. He will trust the judgement of the committee.

HEARING ON SB-221

Presentation and Opening Statement by Sponsor: Senator Ethel Harding, District 24, stated that this bill is a matter that addresses a lot of people in local government and also concerns people in the local communities. It is an act to require an election for the consolidation of county offices. Currently the law provides that the board of county commissioners may, in their discretion, consolidate any two or more of the offices. This bill has struck the board of any county, and have made the bill read that the consolidation must be approved by the electorate of the county. This bill puts the decision in the hands of the local people that would like to have a say in the consolidation

ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 2-12-91

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Beck	X		
Senator Bengtson	X		X
Senator Eck	X		
Senator Hammond	X		
Senator Harding	X		
Senator Kennedy	X		
Senator Thayer	X		
Senator Vaughn	X		
Senator Waterman	X		

Each day attach to minutes.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 12th day of Sept, 1991.

Name: Jack Lynch

Address: Butte - Silver Bow Courthouse

Telephone Number: 723-8262

Representing whom?

Butte - Silver Bow

Appearing on which proposal?

SB 241

Do you: Support? ✓ Amend?_____ Oppose?_____

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

TESTIMONY OF ARVID M. HILLER
VICE-PRESIDENT AND GENERAL MANAGER OF
MOUNTAIN WATER COMPANY
MISSOULA, MONTANA
IN OPPOSITION TO

SENATE BILL 261

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 6
DATE 2-14-91
BILL NO. SB-261

SENATE LOCAL GOVERNMENT COMMITTEE
FEBRUARY 12, 1991

Madam Chairman, Ladies and Gentlemen of the Committee,

My name is Arvid Hiller. I am appearing before this Committee as a resident of the Community of Missoula and Vice-President and General Manager of Mountain Water Company, a privately owned Montana Corporation that has as its only business the responsibility of serving potable water to approximately 50,000 Missoula residents. I have lived my entire life (42 years) in the community. Of those 42 years I have spent the last 21 employed in the utility industry. The last 11+ years I have been an officer and employee of Mountain Water Company.

Throughout the last 11 years the City of Missoula has continually taken a position of claiming that they should own the water system. They have spent considerable time and money (nearly $500,000) in Montana District Court and the Montana Supreme Court. Their efforts to show the court that they should own the private water company have failed. The Courts have unanimously determined that the City has not shown by a preponderance of evidence that City ownership is a necessity for the public good. This has all been done in spite of the fact that the City of Missoula was offered the opportunity to buy the water system in 1979 prior to the Montana Power Company selling the system to Mountain Water. At that time the city declined the opportunity and said they didn't think they wanted the responsibility.

I have always been perplexed by the City's desire to own our Company, <u>more now then ever.</u> The reasons for my concerns are listed below.

1. Throughout the Court hearings the city has never argued that we give bad service. In fact they complimented us.
2. We not only paid $8,000,000 for the system we have also invested nearly $8,000,000 for much needed replacement and improvements to the system.
3. In property taxes alone we have paid nearly $3,000,000.
4. Our annual payroll of $1,000,000 is spent in and supports the local economy.
5. Over the past 3 years we have spent $300,000 on ground water protection. These efforts have centered on:
   a. Identification of possible sources of contamination.
   b. Participation in a local task force to create a program to protect our water.
6. Over the past 6 months we have contracted with a Helena engineering firm(Hydrometrics) to assist us and the

local governmental agency in designing and implementing a Wellhead/Groundwater protection plan for the Missoula aquifer. This is the first program of its type in Montana and the State Water Quality Bureau has said they will probably use our program as a model for a State Wellhead Protection program.

Throughout the past 11 plus years we have been complimented by all of the State and local agencies which have oversight of our company's performance and actions. The State Water Quality Bureau has said we are a very proactive and responsible company. The Missoula City-County Health Department has stated that we are a pleasure to deal with because we recognize our responsibilities and deal with them in an expeditious and professional manner. The Montana Public Service Commission recognizes us as a well managed and efficiently operating company. The City of Missoula has always said they know we give excellent service. It also needs to be recognized that we give this excellent service with rates to our consumers that are near the lowest in the State. We do this in spite of the fact that we, unlike municipally owned systems, pay our fair share of taxes.

The current Mayor of Missoula and I have pledged to each other that we will work together for the common good of our community. There are many areas in our community that can benefit from a cooperative effort between government and private enterprise. My company and I are committed to taking a proactive stance as it relates to protection of the community's water. **The Mayor of Missoula knows this.** For this reason, if the Mayor is asked and he responds as he did to me on January 15th this year, he will say "No, I don't have any problem with the present management or ownership of Mountain Water Company." He will ask, however, "what will this community do if the present ownership of the water system should decide to sell its interest to another company with an irresponsible approach to the water system." Our first response has been, there are many agencies which ensure that any private water company exercises their duties in the best interest of their consumers. Those being, the E.P.A., State Water Quality Bureau, Missoula City- County Health Department and the Montana Public Service Commission and, of course, ultimately, the Courts.

Even given all this protection to the community's water system, Mountain Water Company felt that it would be appropriate to alleviate the City of Missoula and the Mayor's concerns if we offered them an opportunity to purchase the water system in the event the current ownership should ever decide to sell. Therefore on January 15, 1991, I had a conversation with Mayor Kemmis, followed up by a letter to him (copy attached), and told him that our owner and management were willing to give the City an **irrevocable document which would give the City of Missoula <u>first right of refusal</u> to purchase the company in the event the present ownership decided to sell the company.**

In light of the aforementioned offer I fail to see the reason for this latest effort by the Mayor and City of Missoula to incorporate language into Butte legislation that says (page 16, line 25; page 17, lines 2-8; and page 18, lines 6-13), in essence, that a government entity can take ownership of a private company

MOUNTAIN WATER COMPANY

P. O. Box 4826 • 1345 West Broadway • Missoula, Montana 59806 • Phone (406) 721-5570

ARVID M. HILLER
V.P. and General Manager
(406) 721-5570

January 15, 1991
Hand delivered
January 16, 1991

Mayor Dan Kemmis
City of Missoula

Re: Our conversation January 15, 1991, 10:15 a.m.

Dear Mayor:

Thank you for the opportunity to visit with you this morning. This letter is a confirmation of Mountain Water Company's commitment to the proposal I discussed with you.

It is evident to me from our past conversations and your reaffirmation and acknowledgement this morning that you know the present management and ownership of Mountain Water Company have a long-term commitment to groundwater protection and supply of the best quality water possible to the Missoula Community. In light of your confidence in Mountain Water Company, we recognize your concern that, should ownership change to a private company which is not so responsible, to the Missoula Community that the water supply may be adversely affected.

As I stated to you this morning, in an effort to put this continual "Condemnation Issue" to rest forever, Mountain Water Company is willing to draft an irrevocable document that would give the City of Missoula the **first right of refusal** to purchase the company in the event the present ownership decided to sell the company.

Please do not interpret this letter as an intention to sell Mountain Water Company. We feel that we have the resources, experience, and expertise to continue the fine service and delivery of quality water at a fair price to the Missoula Community, now and for years to come.

We are interested in getting together with you and the council to delineate this document forthwith. Please contact me upon your return from Helena.

Very truly yours,

Arvid M. Hiller

Arvid M. Hiller
Vice-President,
General Manager

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 6A
DATE 2-14-91
BILL NO. SB-261

Proposed Amendments
to
Senate Bill 261
by
Mountain Water Company

Senate Local Government Committee
February 12, 1991

1. Page 1, in the title, delete lines 11, 12, and 13 through "SYSTEM;";

2. Page 17, line 1, after "domain" insert "in accordance with Title 70, chapters 30 and 31";

3. Page 17, delete lines 2 through 8 in their entirety;

4. Page 18, line 5, after "domain" insert "in accordance with Title 70, chapters 30 and 31";

5. Page 18, delete lines 7 through 13 in their entirety

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 7
DATE 2-14-91
BILL NO. SB-261

TESTIMONY OF

WILLIAM EVAN JONES
PARTNER

GARLINGTON, LOHN & ROBINSON
MISSOULA, MONTANA

IN OPPOSITION

TO A PORTION OF

SENATE BILL 261

SENATE LOCAL GOVERNMENT COMMITTEE

FEBRUARY 12, 1991

Nearly 70 years ago, our Supreme Court, commenting on condemnations by municipalities, stated:

> "The power to condemn private property against the will of the owner is a stringent and extraordinary one, based upon public necessity or an urgent public policy."

State, ex rel. McLeod v. District Court, 67 Mont. 164 (1923).

Proposed Senate Bill 261, with its insidious language, seeks to allow a municipality to condemn not just bare land or something similarly innocuous, but rather an operating business, involving people and jobs, without a showing of public necessity.

In a water company such as Mountain Water of Missoula, the employees are the most important asset of the business. They should be considered in determining the public interest.

Those people who seek to condemn Mountain Water in Missoula have lost before fair and impartial judges again and again.

They lost a lengthy trial.

They lost an evidentiary hearing.

They lost three times before the Montana Supreme Court.

They have cost the taxpayers of Missoula hundreds of thousands of dollars, not only for their own misguided efforts, but also for the efforts of Mountain Water, whose fees and expenses the taxpayers were required to pay.

In virtually every type of condemnation proceeding, including highways and power lines, state law requires the condemning authority to show public necessity.

There is no reason why those people associated with the City of Missoula should be entitled to special, discriminatory legislation.

There is no reason they should be entitled to accomplish through the legislature what they cannot accomplish through fair and impartial trials and hearings before the courts.

Attached to this brief statement is one of the many opinions rendered by judges during the City of Missoula's attempt to condemn the Mountain Water system. This opinion, rendered January 19, 1988, by the district judge in jurisdiction, sets forth with great clarity the reasons why public necessity is so significant.

Thank you.

WILLIAM EVAN JONES

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 7A
DATE 2-12-91
BILL NO. SB-261

BEST COPY AVAILABLE

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

* * * * * * * * * * *

THE CITY OF MISSOULA, a Montana municipal corporation, Plaintiff, -vs- MOUNTAIN WATER COMPANY, a Montana corporation, Defendant. Warren Bache, LaMarr Baldwin, Jacqueline D. Beck, Linda D. Dunn, Dennis L. Falk, Sharon R. Fraser, Gary L. Frey, Georgette Gerlach, Shirley S. Guy, Bradley E. Hafar, Diane R. Hamilton, Arvid M. Hiller, M. Susan Hunt, Jerry E. Kirkpatrick, Gerald L. Lukasik, Louis F. McConaughey, Edmond L. Magone, Gary M. Mitchell, Ray W. Mitchell, Richard A. Morse, Michael L. Ogle, Susan L. Ori, Timothy J. Schwenk, Julie K. Stanley, Robert B. Ward, and Bonita L. Wilder, Intervenors.	No. 60539 COURT'S ADDITIONAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT, AFTER REMAND

* * * * * * * * * * *

THIS MATTER originally came before the Court on March 18, 1986. A four-day trial was conducted without a jury. Evidence was submitted to the Court in the form of oral testimony and documentary evidence. On August 20, 1986, the Court issued its Opinion and Judgment finding that the City of Missoula (City) had failed to carry its burden of proving by a preponderance of the evidence that it was necessary for the City to acquire the Mountain Water Company (Mountain Water). The City appealed.

On appeal, the Supreme Court affirmed the judgment in part, reversed it in part, and remanded for further consideration of several factors. On December 9, 1987, the Court heard evidence on the specific issues raised by the Supreme Court in its opinion. The City was represented by Dexter L. Delaney and James P. Nugent. Mountain Water was represented by Sherman V. Lohn. The Intervenors (Employees) were represented by William H.

Coldiron. After receiving such additional evidence and having weighed all the evidence in the entire record of both hearings, the Court herein adopts findings and conclusions previously made, and now makes additional Findings, Conclusions and Judgment as follows:

FINDINGS OF FACT

1. Mountain Water is a Montana corporation which owns and operates a water distribution system serving 16,201 customers; 11,720 customers are within the Missoula city limits and 4,481 customers (27.3%) reside outside the city limits.

2. Mountain Water acquired the water system from the Montana Power Company in 1979. In January, 1979, Mr. Kenneth Dodd, a representative of Park Water Company, which owns all the shares of stock of Mountain Water, met with Missoula Mayor Bill Clegg, members of his staff and members of the Missoula City Council. Also present was Vice-president Jack Burke of the Montana Power Company, which company then owned the water system and wished to sell it. (Tr. 596, l. 17)(Exhibit 100, p. 112) The purpose of the meeting was two-fold:

(1) To inform the Mayor that Montana Power was in position to sell the water system.

(2) To see if the Mayor and the City of Missoula were interested in purchasing the company. (Tr. 597, l. 8)

The reason behind all of this was that Park Water Company did not want to purchase Mountain Water if they would just be faced with a condemnation action. (Tr. 597, l. 13) Park Water Company had other subsidiaries condemned by local governments in California. (Tr. 537, l. 16)

The City of Missoula did not express any interest in purchasing the water system (Tr. 599, l. 1) and based upon that lack of interest Park Water Company purchased the system in early 1976. (Tr. 559, l. 5)

3. On August 6, 1979, the City passed a resolution declaring its intent to acquire the system. No further official action was taken upon this resolution until October 1984. The proceedings of the City's meetings for July 30, 1979, (Exhibit 100) and August 6, 1979, (Exhibit 101) clearly show knowledge by the city commission of the acquisition by Park Water Company and of City's inaction. During the 1979 to 1984 five year period, the City adopted a wait and see attitude. Also during this time Mountain Water was engaged in long deferred maintenance of the system.

BEST COPY AVAILABLE

4. In 1983, Giardia infested Rattlesnake Creek causing the water from that source to be harmful to human consumption. Mountain Water quickly obtained additional wells to eliminate use of Rattlesnake Creek water. At the present time, 100% of the system's water supply comes from wells. Mountain Water retains its water rights in the Rattlesnake Creek.

5. Mountain Water is a Montana Corporation, the capital stock of which is solely owned by Park Water Company of California. Henry Wheeler owns nearly all the capital stock of Park Water Company. Park Water Company's headquarters are located in California. Mountain Water is a public utility subject to the requirements of the Montana Public Service Commission, it's regulations and the Montana statutes.

6. Early in 1984, the City started negotiations to purchase Mountain Water. An agreement for purchase could not be reached and the City then adopted a resolution reaffirming its 1979 ordinance authorizing the City to acquire the system by purchase or condemnation. In the latter part of 1984, the City brought the present condemnation proceeding against Mountain Water.

7. In September 1985, some citizens of Missoula started an initiative to stop condemnation proceedings under

BEST COPY AVAILABLE

City's ordinances of 1979 and 1984. A lawsuit ensued because the City did not think the subject matter a proper one for initiative, hence public vote. The Court ordered the election to take place deeming the City's action legislative in character, therefore subject to initiative. That ruling was not appealed. The question presented on the ballot was whether the city voters would prohibit the City from purchasing Mountain W[illegible] the question was complex, the ballots were confusing. The ambiguous ballot included unnecessary multi-syllable words and was expressed in the negative. As such, it is impossible to tell whether it was truly representative of the will of those who voted. No motion or other effort was made to the Court to "clean up" the language of the ballot. The ballot, with the exact question submitted, reads as follows:

PROPOSITION

MISSOULA CITY INITIATIVE NO. 2

INITIATIVE TO ENACT AT THE NEXT REGULAR ELECTION IN THE CITY OF MISSOULA LOCAL GOVERNMENT AN ORDINANCE WITHDRAWING NOTICE PREVIOUSLY GIVEN TO MONTANA POWER COMPANY AND PARK WATER COMPANY INC., A CALIFORNIA CORPORATION PURSUANT TO CITY ORDINANCE 2045 AND CITY RESOLUTION 4385 EXPRESSING THE CITY OF MISSOULA'S DESIRE TO PURCHASE BY NEGOTIATION OR BY EMINENT DOMAIN THE WATER SYSTEM SERVING THE CITY OF MISSOULA CURRENTLY OWNED BY PARK WATER COMPANY, INC., A CALIFORNIA CORPORATION.

The election ballot issued requests City electors to vote that it is now their will that the City of Missoula does not purchase or acquire by eminent domain the Mountain Water water system serving the Missoula community which is currently owned by Park Water Company, a California corporation. A vote for enactment of the proposed ordinance is a vote to prohibit the City of Missoula's acquisition of Mountain Water water system by withdrawing the statutorily required notice previously given to Park Water Company by ordinance and reaffirmed by resolution expressing the City's desire to acquire the Mountain Water system serving Missoula.

☐ FOR prohibiting the City of Missoula's acquisition of the Mountain Water water system currently owned by Park Water Company, a California corporation, by enacting proposed ordinance.

☐ AGAINST prohibiting the City of Missoula's acquisition of the Mountain Water water system currently owned by the Park Water Company, a California corporation, by enacting proposed ordinance.

BEST COPY AVAILABLE

The ballot is not accurate because it recites the water system sought to be condemned is owned by Park Water Company, Inc., a California corporation. The system was and is owned by Mountain Water Company, a Montana corporation, which is the sole Defendant in this action. Only forty-two percent of all of the persons registered to vote within the city limits voted at the election, of the total 7765 voting, 7481 voted on this issue. Of the total voting on this issue (including absentee ballots) 4006 voted to support the City and 3474 against. In the 23 precincts within the city of Missoula which exclusively use Mountain Water, 3339 supported the City's efforts to acquire Mountain Water and 2744 voted against that effort. In the 9 precincts within the City who are only partially served by Mountain Water, 626 voters supported the City and 704 supported Mountain Water. Five small precincts within the city are not served by Mountain Water at all; the vote in these precincts was 22 for the City and 21 for Mountain Water. The campaign upon this issue involved the expenditure of considerable funds on both sides. From the turn out of only 42% of all persons eligible to vote, one can conclude that ownership by the public is not an important issue in the minds of most city residents.

Whether the water users outside of Missoula supported the position of the City or Mountain Water, is not possible to demonstrate with certainty. However, the loss of substantial tax revenue to the County and the School Districts as a result of a condemnation, as demonstrated by the prior testimony, would support a finding that county residents would be opposed to City acquisition with its result of increased taxes to such residents.

There is another reason water users outside the city would not support city ownership, and that is the issue of enforced annexation of these outside areas into the City. It was an item of great concern to a State Senator and others at the City's March 5, 1984, proceeding and other public meetings concerning City's acquisition of Mountain Water. While the City's position was that ownership of water would not provide significant power to force annexation, it could be used to get compliance by providing service only if an owner agrees to not protest annexation. (Ex. 104, pages 5,9,10,11, 12,13)

In 1979, Alderman Toole said: (Ex. 100, p. 113)

> "... the ownership of the water system by Montana Power has given us good service at low rates and has posed a tremendous political problem in this community, in fact it's posed a problem which is beyond repair, we now have 25,000 people living outside the city and as the Mayor said tonight we can't get them in, if we had 50,000 people we could get immense sums from the federal government to help us with our problem, why did the Montana Power Company deliberately go out and extend it's water service to people beyond the corporate limits of the city.
>
> . . . . . .
>
> Alderman Toole asked (Mr. McCann) if they couldn't do what Great Falls and Billings did and just say no water unless they annex."

This additional factor would make it appear the 27.3% of the Mountain Water users outside the city would not support city ownership. They would probably vote to stop the condemnation proceedings of the water system. One could easily conclude that if they wanted into the City, they would already be there.

8. Twenty-six people are employed by Mountain Water for the purpose of operating its system. If the City acquired the system, at least seven such employees would lose their jobs. Those employees remaining would suffer salary reductions which

would work an extreme hardship upon them. The severe hardship of the employees resulting from the City's acquisition of the system is one factor which must be considered in determining whether the taking is necessary. Since 1979, Mountain Water has added thirteen employees to its payroll, all of whom are necessary to its operation.

9. City claims there will be substantial savings to the City resulting from the reduction in the employees' salaries and the termination of certain other employees. The Court finds City has made assumptions in arriving at these alleged savings which are unrealistic. Nor has the City proved that there will be any savings of any consequence to the City by the proposed reduction in the number of employees and the salaries of the employees remaining at Mountain Water. On the other hand, these proposals would work substantial and severe hardships upon the employees for no real gains. The employees are loyal to Mountain Water and their morale is high. They provide water to the consumers in an exemplary and economical fashion. Rather than being overpaid, the salaries that the employees now receive provide them with a reasonable standard of living. The public interest would not be served by such a detrimental impact upon these employees.

10. Mountain Water employees have a substantial amount of experience in operating this water system; whereas, no city employees have any significant experience in operating the system. Were the City to acquire the system and begin operating it, there would be at least a temporary decrease in the present efficiency in operation of the system. This factor, together with a lesser number of employees operating the system, would impair the availability and quality of water service to the consumer. This result would not be in the public interest.

The City offered to prove an instance in 1987 where

there was lack of cooperation between the City and Mountain Water. That offer was refused because it was an issue which had been previously determined; this instance arose clearly after the trial of this cause. If this issue were allowed, it would open the door for all of the parties to bring in essentially new issues such as fines City has paid for discharging sewage into the Clark Fork River, making a virtual serial proceeding out of it. The Court has considered none of these circumstances in making these findings, nor has it based these findings upon any offer of proof.

BEST COPY AVAILABLE

11. The City contended at the original hearing that water from Rattlesnake Creek must be utilized. The use of this water is not necessary; a more than adequate supply of water is available from existing wells. Interesting but heretofore unnoted information was noticed during the re-reading of the transcript (Tr. 667, l. 5) of the 1986 trial and Exhibit 104, page 6. In 1949, the whole city of Missoula was without water for eleven days because the entire water system was frozen. At that time, the basic supply was surface water from Rattlesnake Creek. Rattlesnake water entered the system at temperatures as low as 31°F, or below freezing. When water enters the system at that low temperature, and when ground frost depth is 5 or 6 feet, the system will freeze. Well water, pumped from greater depth, has a higher temperature, and for these purposes, is more desirable because it poses less danger of freezing the whole system.

12. Mountain Water has realized annual profits in the past and, under present projections, will realize annual profits in the future. The City contends that it would operate the system without realizing a profit and would be able to pass on those savings to the consumer. The Court finds that the profits

realized by Mountain Water enable it to make substantial capital improvements to the overall system resulting in a more efficient, economical, and modern system to the consumer. Mountain Water will spend approximately 1.5 million dollars each year for capital improvements to the system over the next five years. The City maintains that it can operate the system with less than half million dollars each year in capital improvements. This projection is either unrealistic, or, if that amount is actually expended by the City, will result in a steadily declining water system with problems occurring more and more frequently. This result would not be in the best interest of the public.

BEST COPY AVAILABLE

Profit realized by Mountain Water is regulated by the Montana Public Service Commission; which also assures that it will not make excessive profits at the expense of the service provided to the consumer. The Court finds that the continuing efficiency of the system, annual improvements to the system, and overall exemplary service provided to the consumer is, in part, a result of the profit incentive of Mountain Water. The City does not have that same incentive.

13. The City alleged it is in the public's best interest for the City to acquire the water system because Mountain Water is presently owned by an out-of-state company. City asserts it has reason to look out for the best interests of its citizens and will do what is in the City's overall best interest as it relates to it citizens' water needs; whereas, an out-of-state company will not because it has no allegiance to the City or this state, being motivated primarily by profit. The proof of these assumptions fails. There is no showing the service rendered by Mountain Water is any less than that rendered by any other water company or that the City will give more or better service.

Contrary to the City's position, the Court finds that

Mountain Water has acted at all times with the best interest of the consumer in mind. It has done a commendable job in providing the City with an efficient, modern water system. Mountain Water's quick response to the Giardia infestation problem amply demonstrates its concern for the health of the citizens of Missoula who use its water. Mountain Water's plan for capital improvements to the system also demonstrates its concern that the citizens have the healthiest and most efficient water system possible. Mountain Water has, at all times, cooperated fully in community planning and has supplied the City with annual updates of its five-year plans. All these facts clearly demonstrate that Mountain Water has acted, and will continue to act, with the health and welfare of its customers and citizens of Missoula and has done as much to benefit the City in relation to the water system as would the City itself have done.

14. The City argues a problem exists because a large number of its citizens are dependent for their supply of water upon a privately owned company. It asserts that a resource so vital to the health of its citizens should not rest in the hands of one person but should be controlled by the citizens themselves through their elective government. The Court is cognizant that it may be more comforting to the City and some of its citizens to know that their water supply is controlled by the City itself. But the City has not submitted any evidence which shows that the citizens long-range access to supplies of water would be endangered in any way by the continued ownership thereof by Mountain Water. Again, Mountain Water operation is regulated in accordance with law and regulations promulgated for the operation of utilities.

Mountain Water has done an excellent job in providing and expanding water supplies to the citizens. Upon taking over ownership from Montana Power Company, Mountain Water immediately

began rebuilding and re-equipping the water system, which had fallen into bad repair. This extensive modernization was done at great cost to Mountain Water and resulted in substantial benefits to the users of the system and to the City as a whole. It infused capital into Missoula economy by the non-Montana owners of Mountain Water Company since mid-1979 as follows:

1979 (six months)	$1,915,350
1980	$1,308,509
1981	$ 672,353
1982	($ 537,443)
1983	($ 767,671)
1984	$ 803,895
1985	$ 253,403

The capital for 1982 and 1983 did not actually leave Montana but instead was invested in the plant and equipment. Mountain Water has long-range plans to continue this modernization which will result in further benefits to the public. In addition, new water sources were developed through the drilling of additional wells. Mountain Water has a formal five-year plan which is updated annually and informal ten to twenty-year plans which are more flexible and designed to meet future needs of the City. Mountain Water has cooperated to a high degree with the City in order to accommodate the City's planning. The great amount of money spent by Mountain Water in the past in renovating the system and the substantial expenditures that will take place in the future for capital improvements demonstrate its commitment to the citizens of Missoula of providing the highest quality water system possible. There has been no substantial complaint of the services provided by Mountain Water by its customers. The Court finds that the citizens long-range access to water will be assured through the continued ownership of Mountain Water. There is no substantial proof to the contrary.

15. The City maintained that during the first five years of ownership, the rate payers would enjoy a net savings of $3,500,000.00. To support this contention, the City made several unsupported assumptions. First, the City assumed that it could purchase the system for $11,000,000.00 and could float a bond issue of $14,000,000.00 to finance the purchase. The City did not authorize or conduct any appraisals to determine the worth of the Mountain Water Company's assets, and did not contest the expertise of the present owner of the system who valued those assets at approximately $19,000,000.00. Furthermore, no expert testified that a $14,000,000.00 bond issue was feasible or appropriate. The City did not make an evaluation of the amount of a bond issue needed in the event that it could not purchase the system for $11,000,000.00. If the City cannot purchase the system for $11,000,000.00, then its projections of savings dramatically decrease as the cost of purchase increases.

The City also assumed that it would not increase rates for at least five years and that Mountain Water would increase rates every year. This claim is nothing more than an assumption. No witness for the City guaranteed that the rates would not be increased during the first five years of operations, nor could anyone guarantee the effects of inflation. As revenue demands increase, new administrations could very well increase water rates. The City's assumption that Mountain Water would raise rates every year beginning in 1984 for the next five years explains some of their assumptions but is completely unfounded.

City's financial projections assume it could spend no more than $500,000.00 annually for capital improvements. This estimate is completely unrealistic in light of the amount of money Mountain Water has spent in the past to upgrade and the systems requirement of future capital expenditures. Because of the needs of the system, the Court finds that expenditures of less than

$500,000.00 annually will result in a disservice to the public.

City claims the services provided by Mountain Water's home office in California could be replaced by the City at no cost. This assertion is contrary to the rulings of the Public Service Commission which found that the services provided by the home office are valuable and allowed those costs to be included in the present rate base. Contrary to the City's assertion, the home office provides such services as planning, finances, consultation, engineering, and overall support. The City would not be able to run the system efficiently without these services.

BEST COPY AVAILABLE

The City represents it would not build a filtration plant for Rattlesnake Creek during the first five years of its ownership, and it did not, therefore, include the cost of a filtration plant in its financial projections. But City also represents it is committed to the construction of the filtration plant, that the plant is needed immediately, and that the Rattlesnake Creek surface water must be used. If the City were to construct the plant now, as it contends that it would do, the effect would be to increase the cost of water to the consumer and eliminate all claims of savings.

Over the next five years, Mountain Water would pay over $1,300,000.00 in taxes to various city and county entities. Were the City to acquire the water system, these tax revenues would be lost to the public interest, and other taxes reshuffled to make up the loss.

16. 4,481 customers of Mountain Water live outside the Missoula city limits and were unable to express their voice on the ballot initiative. Were the city to acquire the system, a significant number of those customers would be forced to convert to the City's system without ever having had the opportunity to express their opinion on the subject. Those customers would have no means of expressing their voice in or vote in the affairs of

city government. The City would be allowed to make rate increases of up to 12% per year on its own initiative and without any control by the Public Service Commission. At present, the rate making process for Mountain Water is controlled by the Montana Public Service Commission and all Mountain Water customers have some voice in the rate making process. Were the City to acquire the system, 27.3% of the system's users would have no voice in the rate making process. This result would not be in the public interest. Because of these additional considerations, the Court finds that the City resolution and results of the initiative election is entitled no greater weight than other factors that must be considered under the determination of necessity.

From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. Section 7-13-4404, M.C.A., provides:

> Before property can be taken, City must show by a preponderance of evidence that the public interest requires the taking based on the following findings:
>
> (1) that the use to which it is to be applied is a use authorized by law;
>
> (2) that the taking is necessary to such use;
>
> (3) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

Considering relevant factors set out in the original findings, and these findings, including the City resolution and the public vote, the Court concludes that the City has failed to meet its burden of proving by a preponderance of the evidence that it is

necessary that the City operate the Mountain Water system. Since this property is already a public utility, and hence to some degree dedicated already to a public use, it is not more necessary the City take over its operation. The public interest will be best served by the City not being permitted to condemn Mountain Water.

2. Having failed to carry its burden of proof, the Court now denies the City relief in this proceeding.

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment be entered in favor of the Defendant, Mountain Water Company, and the Intervenors and against Plaintiff, the City of Missoula, together with costs and expenses allowed by law.

DATED January 19, 1988, at 9:30 A.M.

ROBERT M. HOLTER
District Judge

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 8
DATE 2-12-91
BILL NO. SB-261

TESTIMONY OF DOUGLAS R. HARRISON
CUSTOMER SERVICE SUPERVISOR
MOUNTAIN WATER COMPANY AND
ALDERMAN WARD 4, CITY OF MISSOULA
IN OPPOSITION TO

SENATE BILL 261

SENATE LOCAL GOVERNMENT COMMITTEE
FEBRUARY 12, 1991

Madam Chairman, Ladies and Gentlemen of the Committee,

My name is Doug Harrison. I am an employee of Mountain Water Company, which is a private water utility which serves most of the City of Missoula. I am also serving my second term on the Missoula City Council. The portion of the Bill I would like to address deals only with Pages 16, 17, and 18, beginning with Section 34.

Today I am not speaking on behalf of the Government of the City of Missoula. I do speak on behalf of my contituents from the Ward I have represented for over 5 years, as well as many, many people from across the City of Missoula, who are adamantly opposed to this portion of the Bill.

The idea of a simple majority vote of a city council as being conclusive on the issue of necessity is chilling, even to those of us who are supposedly in control.

I am not anti-government. There are different times and situations where governments need to use their powers of Eminent Domain. The laws which are in place protect the people from a government that may be too aggressive and they protect governmental bodies from taking actions which would later prove to be rash! A simple majority vote subjects this very important issue to the politics of the hour and does not serve the best interest of a community as a whole. If a government needs to use this power of Eminent Domain, it is not unreasonable that they prove it is necessary for the public good in order to do so.

The current law has been a good law for the State of Montana and that is why it has been on the books for so long.

Being on the City Council, I understand the need for local governments to have certain powers. However, I also recognize there needs to be a balance. The current State law dealing with Eminent Domain protects us from ourselves and gives us that balance. I would encourage you to delete this portion of the bill, not only for the good of the people of Missoula, but for everyone in the State of Montana.

While I am here, I would like also to give an employee's perspective. Mountain Water Company was in court for several years fighting condemnation by the City of Missoula. After extensive testimony, both the lower court and the Montana Supreme Court, by unanimous decision, ruled that it **was not** in the best interest of the citizens of Missoula to allow this condemnation.

After so much pressure for so long, the employees felt great relief and continued the excellent service for which they are known. When the employees heard about the proposal before you today, they were shocked. Morale has nose-dived. They can not believe the City might be able to change the rules to suit their particular situation. These employees are not political--they do not know how to fight something like this. Most have never been to the Legislature. These are working people, the majority born and raised in Montana, who just do not have the time or experience necessary to appear here and argue about what's fair. These people are extremely concerned about what might happen here. That makes me angry!

This little portion stuck at the end of this bill is not in the best interest of people of Missoula, not in the best interest of the employees affected by this legislation, and it can not be in the best interest of the people of the State of Montana. I believe you will do what is right.

Please delete this portion of the bill!

Thank you.

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 9
DATE 2-12-91
BILL NO. SB-261

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 12 day of Feb, 1991.

Name: Bruce Suenram

Address: 2521 S. Ave West, Missoula Mt.

Telephone Number: 549-6172

Representing whom?

Missoula Rural Fire Dist.

Appearing on which proposal?

SB 261

Do you: Support?____ Amend? ✓ Oppose?____

Comments:

We concur with the amendments offered by Mr. Doney and Mr. Heiser. Without the amendments this bill simply allows condemnation of the Mountain Water System. This would allow the City of Missoula to use the water service as an annexation tool as they now use the sewer system.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 10
DATE 2-18-91
BILL NO. SB-261

Reba Falk
283 South Crest Ave.
Hamilton, MT 59840

Senator Esther Bengtson, Chairman
Senate Local Government Committee
Capitol Station
Helena, MT 59620

RE: SB 261

Dear Senator Bengtson:

For the record, I would like to submit testimony regarding the above referenced Senate Bill. I am opposed to passage of this bill for the following reasons;

1) Municipalities can raise rates up to 12% without going before the Public Service Commission - Private owned cannot - they have to justify every increase.

2) Once municipalities obtain public water system, rates usually go up substantially and regularly.

3) Repair service is limited to certain hours.

4) Jobs are frequently jeopardized.

5) A recent study indicates that privately owned utilities operate more efficiently than public utilities.

For these reasons, please DO NOT PASS SB 261.

Sincerely,

Reba Falk
Ravalli County
Hamilton, MT 59840

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Chairman Esther Bengtson, on February 14, 1991, at 3:23 p.m.

ROLL CALL

Members Present:

Esther Bengtson, Chairman (D)
Eleanor Vaughn, Vice Chairman (D)
Thomas Beck (R)
Dorothy Eck (D)
H.W. Hammond (R)
Ethel Harding (R)
John Jr. Kennedy (D)
Gene Thayer (R)
Mignon Waterman (D)

Members Excused: none

Staff Present: Connie Erickson (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Linda Stoll Anderson shared information with the committee about a possible committee bill. This past weekend she was able to talk with the County Treasurers, County Clerks, and the Sheriffs that were meeting in Helena. She had presented three tiers, #1 structure of boards in Title 7, #2 boards, and #3 fees and accounting. The Clerks, Treasurers, and Sheriffs are very unhappy with tier #3, and asked that it be pulled, and study for a couple of years. They are the most controversial of the package. Ms. Anderson said that she would like to address this committee in two years about the study. Senator Bengtson said that the committee would consider tier #1 & #2 today, and the committee bill request. Senator Hammond asked Ms. Anderson if she talked with the Commissioners from Phillips County? She had not. Senator Hammond said that they were only in favor of tier #3. Senator Bengtson said that the committee members need to be ready to discuss this bill before transmittal and assigned

Senator Harding said she understood Senator Eck's concerns. If this can be tied to subdivision review process, and this should all be done at once. Senator Eck said that the water user entity should be notified that they have an interest in this subdivision. C. Erickson said that this was what she meant to tie these all together.

Senator Harding asked Ms. Brunner if through their organization they would notify their water entities that this office will be going through the subdivision review, so they would need to know. Ms. Brunner said that each water user entity would be notified to do that, and it would not have to go through the office.

Senator Bengtson said that C. Erickson would work on the amendments, and all motions were withdrawn. The committee will then consider those in Executive Action.

EXECUTIVE ACTION ON SB-261

Motion: Senator Beck moved that all reference to taking of water systems by eminent domain without proving necessity be stricken, and strike section 35 entirely.

Discussion: Senator Beck asked C. Erickson to draft the amendments that would do this.

Amendments, Discussion, and Votes: Amendments (Exhibit #4) The motion to amend was unanimous. Senator Hammond had left the meeting.

Motion and Vote: Senator Eck moved to Do Pass SB-261 as Amended. The vote was unanimous with the 8 members present. The secretary will get Senator Hammond's proxy vote.

ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 2-14-91

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Beck	X		
Senator Bengtson	X		
Senator Eck	X		
Senator Hammond	X		
Senator Harding	X		
Senator Kennedy	X		
Senator Thayer	X		
Senator Vaughn	X		
Senator Waterman	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 2-14-91 Bill No. SB-261 Time 5:12

NAME	YES	NO
Senator Beck	X	
Senator Bengtson	X	
Senator Eck	X	
Senator Hammond		
Senator Harding	X	
Senator Kennedy	X	
Senator Thayer	X	
Senator Vaughn	X	
Senator Waterman	X	

Joyce Inchauspe-Corson
Secretary

Senator Esther Bengtson
Chairman

Motion: Due Pass as Amended

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 4
DATE 2-14-91
BILL NO. SB-261

Amendments to Senate Bill No. 261
First Reading Copy

For the Committee on Local Government

Prepared by Connie Erickson
February 15, 1991

1. Title, line 8.
Following: "DISTRICTS;"
Insert: "AND"

2. Title, lines 10 through 14.
Strike: ";" on line 10 through "MCA" on line 14

3. Page 16, line 22.
Strike: ":"

4. Page 16, line 23.
Strike: "(a)"

5. Page 16, line 24.
Strike: "; or"
Insert: "."

6. Page 16, line 25.
Strike: "(b)"
Insert: "(3) In case agreement is not reached in accordance with subsection (2), the governing body may"

7. Page 17, line 1.
Following: "domain"
Insert: "in accordance with Title 70, chapters 30 and 31"

8. Page 17, lines 2 through 8.
Strike: subsection (3) in its entirety

9. Page 17, line 9 through page 18, line 13.
Strike: section 35 in its entirety
Renumber: subsequent section

REPORT LCB4

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
FINAL COMMITTEE REPORT OF REFERRED BILLS
COMMITTEE--(H) LOCAL GOVERNMENT

RUN TIME 20:33
RUN DATE.... 04/04/91

CHAIRMAN--DIANA WYATT
NORMAL SCHEDULE==> SITE: ROOM 312-2 DAYS: M,W,F TIME: 3:00 P.M.
SECRETARY-LOIS O'CONNOR

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0201	2/09	3/07		CONCUR		3/08
BROWN, BOB			REQUIRE COUNTY ATTORNEY TO SERVE AS LEGAL ADVISER TO FIRE SERVICE AREAS			
SB0221	3/04	3/11		TABLED		
HARDING, ETHEL			REQUIRING AN ELECTION TO CONSOLIDATE COUNTY OFFICES			
SB0224	3/04	3/11		CONCUR		3/12
VAUGHN, ELEANOR			ESTABLISHMENT AND FUNDING OF LOCAL AIR POLLUTION CONTROL PROGRAMS			
SB0261	3/04	3/11		CONCUR		3/14
LYNCH, J.D.			REVISE LAW OF MUNICIPAL AND METROPOLITAN WATER SUPPLY -- AUTHORIZE TAKING			
SB0276	3/04	3/13		CONCUR AS AMENDED		3/14
FRITZ, HARRY			PARTIAL SALARY FOR FIREFIGHTER INJURED IN PERFORMANCE OF DUTY			
SB0305	3/04	3/13		CONCUR		3/14
ANDERSON, JR., JOHN			ALLOW MULTIJURISDICTIONAL SERVICE DISTRICT TO PROVIDE AMBULANCE SERVICE			
SB0334	3/04	3/13		CONCUR		3/14
HARDING, ETHEL			REVISE PERSONAL LIABILITY FOR COUNTY OFFICIALS WHO EXCEED BUDGETS			
SB0357	3/04	3/13		CONCUR		3/14
BECK, TOM			REQUIRE DHES TO CONSULT WITH LOCAL GOVT'S ABOUT SOLID WASTE FACILITIES			
SB0367	3/04	3/13		CONCUR		3/14
CRIPPEN, BRUCE			AUTHORIZE PROPERTY TRANSFER TO YELLOWSTONE ART CENTER FOUNDATION			
SB0437	3/04	3/13		CONCUR		3/14
BROWN, BOB			LAKE DEVELOPMENT PERMITS			
SB0440	3/04	3/18		CONCUR AS AMENDED		3/19
BENGTSON, ESTHER			GENERALLY REVISE LAWS RELATING TO COUNTY-APPOINTED BOARDS			

SENATE BILL NO. 261

INTRODUCED BY LYNCH, HALLIGAN, JACOBSON, STIMATZ, PIPINICH, FRITZ, DAILY, WHALEN, HARRINGTON, QUILICI, KADAS, BROOKE, DRISCOLL, COCCHIARELLA, MENAHAN, MCCARTHY, REAM, SQUIRES, HARPER, MANNING, PINSONEAULT, PAVLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW RELATING TO CONSOLIDATED GOVERNMENT AND MUNICIPAL WATER SUPPLY SYSTEMS; PROVIDING THAT A CONSOLIDATED LOCAL GOVERNMENT MAY SUPPLY SANITARY SEWER OR STORM SEWER SERVICES OR WATER TO A DISTRICT; AND PROVIDING THAT A CONSOLIDATED LOCAL GOVERNMENT OR A CITY OR TOWN COUNCIL MAY PURCHASE A PRIVATE WATER SUPPLY SYSTEM OR TAKE THE SYSTEM BY EMINENT DOMAIN~~;--PROVIDING--THAT--THE--PASSAGE--OF--AN--ORDINANCE-OR RESOLUTION-PROPOSING-THE-TAKING-IS-CONCLUSIVE-ON--THE--ISSUE OF--NECESSITY--FOR--THE--TAKING--OF--A--SYSTEM;-AND-AMENDING SECTION-7-13-4403;-MCA.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 34], the following definitions apply:

(1) "District" means a district authorized in [section 2] to provide a system.

(2) "Local government" means a consolidated form of local government provided for in Title 7, chapter 3, parts 11 through 13.

(3) "System" means a public water supply, sanitary sewer system, storm sewer system, or any combination of water supply, sanitary sewer, or storm sewer systems.

NEW SECTION. **Section 2. Authorization to create district.** Whenever the public convenience and necessity may require, in order to construct a water supply, sanitary sewer, or storm sewer system within a local government that would serve the inhabitants of the local government, the governing body may create a district to provide the system.

NEW SECTION. **Section 3. Resolution of intention to create district.** (1) Before creating a district, the governing body shall pass a resolution of intention to create the district.

(2) The resolution must designate:

(a) the proposed name of the district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands to be included within the district, giving the boundaries of the district;

(d) the general character of the system and its proposed location;

(e) the name of the engineer who is to have charge of the work; and

(f) the estimated cost of the district.

NEW SECTION. **Section 4. Sufficiency of description in resolution of intention.** In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it is sufficient to briefly describe the work or the district and to refer to the resolution of intention for further particulars.

NEW SECTION. **Section 5. Notice of resolution of intention upon concurrence -- hearing.** (1) The governing body shall give notice of the passage of its resolution of intention to create the district.

(2) The notice must be published for 10 consecutive days in a daily newspaper published nearest to the place where the district is to be created. The governing body shall also cause a copy of the notice to be posted in three public places within the boundaries of the district. A copy of the notice must be mailed to every person, firm, or corporation or the agent of the person, firm, or corporation owning property within the proposed district, at his last-known place of residence, upon the same day the notice is first published or posted.

(3) The notice must describe the general character of the improvement or improvements proposed to be made, state the estimated cost, and designate the time when and the place where the governing body will hear and pass upon all protests that may be made against the making or maintenance

of the improvements or the creation of the district. The notice must refer to the resolution on file in the office of the local government clerk for the description of the boundaries.

NEW SECTION. **Section 6. Right to protest.** (1) At any time within 30 days after the date of the first publication of the passage of the resolution of intention, any owner of property liable to be assessed for the system may make written protest against the proposed system.

(2) The protest must be in writing and be delivered to the county clerk, who shall endorse on the protest the date of the receipt.

NEW SECTION. **Section 7. Sufficient protest to bar proceedings.** If protests against the proposed system are received from the owners of 50% or more of the area in the proposed district, further proceedings may not be taken by the governing body.

NEW SECTION. **Section 8. Hearing on protest.** (1) At the next regular meeting of the governing body after the expiration of the time within which protest may be made, the governing body shall hear and pass upon all protests, and its decision is final and conclusive.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings, property owned by local government and school

districts is considered the same as any other property in the district.

(3) The governing body may adjourn the hearing from time to time.

NEW SECTION. **Section 9. Resolution creating district -- power to order improvements.** (1) Before ordering any of the proposed improvements, the governing body shall pass a resolution creating the district in accordance with the resolution of intention introduced and passed by the governing body.

(2) The governing body has jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest is found by the governing body to be insufficient; or

(c) when a protest is overruled.

NEW SECTION. **Section 10. Governing body to administer district.** (1) The members of the governing body are ex officio commissioners of the district formed under the provisions of [sections 1 through 34] and have jurisdiction over the system within the district. The governing body is responsible for the proper functioning and maintenance of

the system.

(2) The governing body is responsible for the condition and maintenance of all publicly owned roads, streets, alleys, land, parks, or other thoroughfares within the boundaries of the district affected by the construction or maintenance of the structures under control and jurisdiction of the district.

NEW SECTION. **Section 11. Change of boundaries -- limitations.** (1) The governing body may by resolution make changes in the boundaries of a district as they consider reasonable and proper but may not delete any portion of the proposed area if the deletion will create an island of included or excluded lands.

(2) The governing body may not delete any portion of the proposed area that is contributing or may reasonably be expected to contribute to the pollution of any watercourse or body of water in the proposed area.

(3) For the purpose of subsection (2), it is conclusively presumed that an area that is within 1,500 feet of a proposed or existing sanitary sewer is contributing to the pollution of a watercourse in the proposed area.

NEW SECTION. **Section 12. Applicable provisions of laws relating to rural improvement districts.** The provisions of 7-12-2101, 7-12-2106, 7-12-2107, 7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153,

7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), 7-12-2169, and 7-12-2171 through 7-12-2174 pertaining to rural improvement districts apply to [sections 1 through 34] unless in conflict with the provisions of [sections 1 through 34].

NEW SECTION. **Section 13. Adequate records to be maintained.** The records of the district pertaining to the collection of the operation and maintenance tax levied and the records of the district pertaining to expenditures for construction of the system must be kept and maintained in the office of the treasurer of the local government where the district is located. These records must include but not be limited to a list of individual property that is delinquent in payment, together with the name of the owner or owners of the property.

NEW SECTION. **Section 14. Assessment of costs.** To defray the cost of installing and maintaining the system under the provisions of [sections 1 through 34], the governing body shall adopt the following method of assessment:

(1) The governing body shall assess the entire cost of the improvements against the entire district.

(2) Each lot or parcel of land assessed in the district is to be assessed with that part of the whole cost that its area bears to the area of the entire district, exclusive of

streets, avenues, alleys, and public places.

NEW SECTION. **Section 15. Status of federal property within district.** Whenever any lot, piece, or parcel of land belonging to the United States fronts upon the proposed work or improvement or is to be included within the district the governing body shall in the resolution of intention declare that the lots, pieces, or parcels of land must be omitted from the assessment to be made to cover the cost and expenses of the work or improvement, and the cost of the work or improvement in front of the lots, pieces, or parcels of land must be paid by the local government from its general fund.

NEW SECTION. **Section 16. Restriction on assessments following change of boundaries.** Nothing in [section 11] permits the assessment of the cost of the system against the lands remaining in the district after a boundary change at a higher rate per square foot than the rate per square foot that would have been assessed if the entire cost of the improvements as estimated in the resolution of intention had been assessed against each lot and parcel of land included within the boundaries of the district as described in the resolution of intention unless a new resolution of intention to recreate the district is adopted and a hearing is held on the new resolution after notice as required for the original resolution of intention.

NEW SECTION. **Section 17.** **Resolution to assess and levy tax for making improvements.** (1) To defray the cost of making improvements in the district, the governing body shall by resolution levy and assess a tax upon all property in the district created for the purpose of the system by using as a basis for the assessment the method provided for by [sections 1 through 34].

(2) The resolution must contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment when made and the day when the payment becomes delinquent.

(3) The resolution, signed by the governing body, must be kept on file in the office of the local government clerk.

NEW SECTION. **Section 18.** **Term of assessment for costs of construction.** The payment of the assessment to defray the cost of constructing any improvements in the district may be spread over a term of not more than 20 years, with payment to be made in equal installments.

NEW SECTION. **Section 19.** **Notice of resolution to assess and levy tax for making improvements -- protest.** (1) A notice, signed by the local government clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the clerk and is subject to inspection, must be published at least once in a newspaper published nearest to where the

special improvement is to be made.

(2) The notice must state the time and place in which objections to the final adoption of the resolution will be heard by the governing body.

NEW SECTION. **Section 20.** **Hearing on protest.** (1) The time for the hearing on protest must be not less than 5 days after the publication of the notice required by 7-13-126.

(2) At the time fixed, the governing body shall meet and hear all objections and for that purpose may adjourn from day to day. The governing body may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the clerk of the local government, must be delivered to the local government treasurer within 2 days after its passage.

NEW SECTION. **Section 21.** **Assessments and other charges as lien.** A special assessment made and levied to defray the cost and expenses of the work for the system, together with any percentages imposed for delinquency and for cost of collection, are a lien upon the property upon which the assessment is made and levied, from and after the date of the passage of the resolution levying the assessment. The lien may only be extinguished by payment of the assessment, with all penalties, costs, and interest.

NEW SECTION. **Section 22.** **Charges for services.** (1) The governing body may by ordinance or resolution establish just

and equitable rates, charges, and rentals for the services and benefits directly or indirectly afforded by a system operated by, controlled by, and under the jurisdiction of a district formed under [sections 1 through 34].

(2) The rates, charges, and rentals must be as nearly as possible equitable in proportion to the services and benefits rendered and may take into consideration the quantity of water supplied, the amount of sewage produced and its concentration, water pollution qualities in general, and the cost of disposal of sewage and storm waters.

NEW SECTION. **Section 23. Authorization to use federal funds.** The governing body may apply for and receive from the federal government, on behalf of the district, any money that may be appropriated by congress for aiding in local public works projects. The governing body may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects and repay the loan out of the money received from the tax levy provided for in this part.

NEW SECTION. **Section 24. Charges for costs when federal funding is sought.** Notwithstanding any other section of [sections 1 through 34] or a limitation imposed in [sections 1 through 34], when the governing body has applied for funds pursuant to [section 23], the governing body may adopt a system of charges and rates to require that each

recipient of services pays its proportionate share of the costs of operation, maintenance, and replacement and to require industrial users of services to pay that portion of the cost of construction of the system that is allocable to the industrial user.

NEW SECTION. **Section 25. Resolution to establish service charges -- hearing -- limitations and tax levy.** The governing body may, subject to the provisions of Title 69, chapter 7, by resolution and after public hearing:

(1) establish the rates, charges, and rentals in amounts sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) establish an additional charge for the operation and maintenance of a system and a plant; and

(3) levy and assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements in the district, not in excess of 2 mills on each dollar of taxable valuation, to provide sufficient revenues for the reserve fund in the amounts necessary to meet the financial requirements of the fund as described in [sections 28 through 33].

NEW SECTION. **Section 26.** Hearing and notice on tax levy for operation and maintenance. (1) Not less than 30 days prior to the date of making the levy for operation and

maintenance of the system, the governing body shall hold a public hearing on the resolution.

(2) Notice clearly setting forth the subject matter of the hearing must be given by the governing body by publication as provided in 7-1-2121, and notice must also be posted in three public places within the district.

NEW SECTION. **Section 27. Preparation and filing of district budget.** (1) Not less than 30 days prior to the date of the public hearing on the resolution, the governing body shall prepare and file in the office of the clerk of the local government in which the district is located and in the office of the governing body a complete, detailed budget for operation and maintenance of the system, showing all income and expenditures for the year prior to the hearing and all estimated income and expenditures for the next ensuing year in which the levy is assessed.

(2) The provisions of law relating to local government budgets and expenditures must be complied with by the district.

NEW SECTION. **Section 28. Authorization for reserve fund.** The governing body may, in order to secure prompt payment of any district bonds issued in payment of the cost of improvements for the district and the interest on the bonds as it becomes due, create, establish, and maintain by resolution a fund, to be designated as the "reserve fund",

for each issue of bonds.

NEW SECTION. **Section 29. Sources of money for reserve fund.** (1) For the purpose of providing money for the reserve fund, the governing body may in its discretion, from time to time, transfer to the reserve fund from the operation and maintenance fund of the district an amount as may be considered necessary or as may be agreed upon with the holders of the bonds.

(2) Whenever there is money in the bond fund that is not required for payment of a bond of the district or interest on the bond, as much as is necessary to pay the loan referred to in [section 31] must, by order of the governing body, be transferred to the reserve fund.

NEW SECTION. **Section 30. Transfers to reserve fund considered as loans.** The amount or amounts transferred under [section 29] must be considered as loans from the operation and maintenance fund to the reserve fund.

NEW SECTION. **Section 31. Loans from reserve fund to bond fund as lien.** (1) Whenever a loan is made to the bond fund from the reserve fund, the reserve fund has a lien for the amount of the loan on:

(a) the land within the district that is delinquent in the payment of its assessments;

(b) unpaid assessments and installments of assessments on the district, whether delinquent or not; and

(c) money coming into the bond fund to the amount of the loan, together with interest on the loan from the time it was made at the rate or percentage payable by the bond or of interest on the bond for which the loan was made.

(2) If after all the bonds of the district have been fully paid and all money remaining in the bond fund has been transferred to the reserve fund, there still remains a debt from the district to the reserve fund, the governing body may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off the loan to the reserve fund.

NEW SECTION. **Section 32. Limitation on repayment of loan to reserve fund.** Nothing in [sections 28 through 33] permits the repayment of a loan to the reserve fund at any time unless all interest accrued on the bonds has been fully paid and all principal agreed to be paid in accordance with the redemption schedule as may be provided in the resolution or resolutions authorizing the bonds has been paid.

NEW SECTION. **Section 33. Covenants to use and maintain reserve fund.** (1) In connection with the issuance of district bonds, the governing body may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the reserve fund to the fund maintained for the payment of the bonds in amounts sufficient to make good any deficiency in the bond and interest accounts to the

extent that money is available; and

(b) to provide money for the reserve fund pursuant to the provisions of [sections 22 and 25] by establishing and collecting rates, charges, and rentals for services and benefits in amounts sufficient to provide net revenues in excess of the current costs of operation and maintenance of the system and sufficient to maintain a balance in the reserve fund as the governing body may agree to and undertake.

(2) The undertakings and agreements authorized by subsection (1) are binding upon the local government as long as any bonds or any interest on the bonds remains unpaid.

NEW SECTION. **Section 34. Acquisition of private water supply system.** (1) If a franchise has been granted to or a contract made with any person or corporation and the person or corporation has established or maintained a system of water supply or has valuable water rights or a supply of water desired by the district for supplying the district with water, the governing body granting the franchise, entering the contract, or desiring the water supply shall, by the passage of a resolution, give notice to the person or corporation that it desires to purchase the plant, franchise, or water supply of the person or corporation.

(2) The governing body passing a resolution as provided in subsection (1) may:

(a) purchase the plant, franchise, or water supply upon terms agreed to by the parties, or.

(b)(3) IN CASE AGREEMENT IS NOT REACHED IN ACCORDANCE WITH SUBSECTION (2), THE GOVERNING BODY MAY take the plant, franchise, or water supply by eminent domain IN ACCORDANCE WITH TITLE 70, CHAPTERS 30 AND 31.

(3) A resolution that authorizes the taking of private property for purposes of supplying the district with water is conclusive as to the necessity for the taking, except with respect to a water supply system used for irrigation of agricultural crops or for livestock purposes. The taking must conform to and be conducted as provided in Title 70, chapters 30 and 31.

Section 35. Section 7-13-4403, MCA, is amended to read:

"7-13-4403. Acquisition of private water supply system. (1) It is provided that whenever If a franchise has been granted to or a contract made with any person or persons, corporation, or corporations and such the person or persons, corporation, or corporations, in pursuance thereof or otherwise, have has established or maintained a system of water supply or have has valuable water rights or a supply of water desired by the city or town for supplying the city or town with water, the city or town granting such the franchise, or entering in such the contract, or desiring such the water supply shall, by the passage of an ordinance,

give notice to such the person or persons, corporation, or corporations that it desires to purchase the plant, and franchise, and or water supply of such the person or persons, corporation, or corporations.

(2) The city or town shall have the right to so passing an ordinance as provided in subsection (1) may:

(a) purchase the plant or water supply upon such terms as agreed to by the parties agree, or

(b) take the plant, franchise, or water supply by eminent domain if the plant, franchise, or water supply is to be used for a municipal water system.

(3) An ordinance that authorizes the taking of private property for purposes of supplying the city or town with water is conclusive as to the necessity for the taking, except with respect to a water supply system used for irrigation of agricultural crops or livestock purposes. The taking must conform to and be conducted as provided in Title 70, chapters 30 and 31."

NEW SECTION. **Section 35.** Codification instruction. [Sections 1 through 34] are intended to be codified as an integral part of Title 7, chapter 13, and the provisions of Title 7, chapter 13, apply to [sections 1 through 34].

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By DIANA WYATT CHAIR, on March 11, 1991, at 3:00 P.M.

ROLL CALL

Members Present:
Diana Wyatt, Chair (D)
Jessica Stickney, Vice-Chair (D)
Joe Barnett (R)
Arlene Becker (D)
Vivian Brooke (D)
Dave Brown (D)
Brent Cromley (D)
Paula Darko (D)
Tim Dowell (D)
Budd Gould (R)
Stella Jean Hansen (D)
Harriet Hayne (R)
Ed McCaffree (D)
Tom Nelson (R)
Sheila Rice (D)
Richard Simpkins (R)
Norm Wallin (R)

Members Absent: Rep. J. Rice (R)

Staff Present: Bart Campbell, Legislative Council
Lois O'Connor, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON SB 224

Presentation and Opening Statement by Sponsor:

SEN. VAUGHN, Senate District 1, Libby, stated SB 224 would allow local governments to set up local air pollution programs, and streamline the procedure for establishing local air pollution programs by deleting law that states they must have petitions to set up the programs. They could have a public hearing and the people would be involved. It would allow the counties to apply for state and federal grants and establish fees if necessary.

revise how the Department of Administration distributes the 911 emergency telecommunications account to the cities and counties. It would correct the problem in the DOA of recovering the cost of administering the program and change the number of warrants issued by the 911 program.

Proponents' Testimony:

Tony Herbert, Department of Administration, stated currently there is a 25 cent fee assessed to all telephone subscribers per month. The fee is collected by the phone companies and deposited with the Department of Revenue on a quarterly basis. The DOA works with the telephone companies and pays them for the work they incur for 911 systems. They then pay the DOR for the fee they incur to collect the tax and then pay themselves for expenses incurred. The balance is allocated to cities and counties, who are part 911 approved programs, on a per capita basis. SB 160 would cut the amount of checks issued from 1,250 to 350 checks a year by being able to send them directly to the 911 jurisdictions. Because of the uneven flow of the DOA's expenses and the even flow of the revenue, they have not been able to collect a complete 7% on an annual basis. The DOR would like to change its limitation to an annual instead of a quarterly factor.

Gordon Morris, Montana Association of Counties, said **SEN. WILLIAMS** introduced a resolution in the State Administration Committee. He asked that it be tabled in deference to SB 160. It would identify the administrative entity for purposes of the 911 jurisdiction and have the DOA forward the money to that entity rather than all the jurisdictions that are members of the 911 administrative unit.

Lyle Nagel, Montana Volunteer Firefighters Association, said that 911 is a blessing to emergency services of Montana and urged support of SB 160.

SEN. WILLIAMS went on record in support of SB 160.

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

SEN KENNEDY urged support of SB 160.

HEARING ON SB 261

Presentation and Opening Statement by Sponsor:

SEN. LYNCH, Senate District 34, Butte, stated SB 261 will address two problems in the Butte-Silver Bow area. Currently, the Butte-Silver Bow water system is owned by a private corporation and the

city will eventually have to purchase it. It would allow eminent domain to be placed in the statute and allow for the inclusion of consolidated governments, which previously only referred to city or county governments. Butte-Silver Bow and Anaconda-Deer Lodge are consolidated counties and SB 261 would include them in the same provisions of the law available to all other cities and counties. It would also allow Butte-Silver Bow to incorporate the water company into its present sewage system districts.

Proponents' Testimony:

REP. D. BROWN supported SB 261 because it affects Butte-Silver Bow.

Alec Hansen, Montana League of Cities and Towns, stated SB 261 allows a consolidated government to acquire a water system. Under current law, that is not possible. There is a great need in Butte-Silver Bow to acquire the private water system.

Jim Johnston, Director, Public Works Butte-Silver Bow, and **REP. S. J. HANSEN** went on record in support of SB 261.

Arvid Hiller, General Manager, Mountain Water Company, Missoula, provided written testimony. **EXHIBIT 4**

James Lofftus, Montana Fire Districts Association, went on record in support of SB 261.

Doug Harrison, Employee, Mountain Water Company, provided written testimony. **EXHIBIT 5**

Opponents' Testimony:

Dan Kemmis, Mayor of Missoula, opposed SB 261 as written but would be a proponent if it were returned to its original form. Section 7-5-4106, MCA, provides that a city or town, in order to acquire property for opening, establishing, widening, or altering any street, alley, park, sewer, waterway in the city or town, or for any other municipal purpose, may exercise the power of eminent domain. This section says that in order to exercise the power of eminent domain for a public purpose, the city or town must pass a resolution to establish the necessity. The city must then determine the value of the property being taken through the court system. The acquisition of water systems for drinking water is a public purpose. The city or town council has the authority to adopt means for securing a supply of water for the use of its inhabitants. If the bill passes in its current form, then Missoula alone will not have the opportunity to own its water system.

Sherman Lohn, Attorney, Missoula, provided written testimony. **EXHIBIT 6, 7**

Jim Nugent, Missoula City Attorney, stated the water company, if acquired by the city of Missoula, is entitled by the Constitution and Montana state law to just compensation. The eminent domain proceeding is a two step process. There is the necessity decision and evaluation decision. Missoula would like to see SB 261 back in its original form. When they talk about acquiring a water system, you are talking about a natural monopoly. It is impossible to compete with an existing water system. Out of necessity, they must require the existing system if they want public ownership of the system. Because water service is a natural monopoly, it is important for public ownership. Through public ownership, the public will have the right to participate in the administrative and operational decision making that occurs.

Questions From Committee Members:

REP. D. BROWN asked **Sherman Lohn** if he was an opponent of this bill as introduced in the Senate and proponent for it as presented in the House. **Mr. Lohn** said it was introduced in the Senate with amendments that would allow taking the Missoula water system without proving necessity. He is opposed to the amendment and is a proponent for the bill as it stands.

REP. WALLIN asked **SEN. LYNCH** if the water system was as bad as he says it is, wouldn't the owner sell without going through condemnation. **SEN. LYNCH** said even with eminent domain, fair market value must be paid. **REP. WALLIN** stated that condemnation is serious and he doesn't like to make it more available. **SEN. LYNCH** said it is Butte's feeling that their area ought to be included only because they are consolidated. Consolidated governments are not under the normal statutes of condemnation.

REP. BROOKE stated in **Mayor Kemmis's** testimony, with regard to support for infra-structure grants, would preclude any private business from applying for that type of money and asked **Ted Doney, Registered Lobbyist, Mountain Water Company,** if that was his interpretation. **Mr. Doney** said he had not reviewed the bill closely but they could be easily amended to address **Mayor Kemmis's** concern.

REP. SIMPKINS asked **SEN. LYNCH** if some lines of the Butte water system are outside the city limits. **SEN. LYNCH** said they don't have a city limit. It is Butte-Silver Bow. The city is the county and the county is the city.

REP. BROOKE asked **Mr. Lohn** if he interpreted the bill to read if Missoula city and county were to be consolidated, they would have the same privilege that is now afforded the consolidated government of Butte-Silver Bow. **Mr. Lohn** said if the bill passed as approved by the Senate, and later the two consolidated, yes. It could apply to a consolidated system. It would not change the condemnation. **REP. BARNETT** asked **SEN. LYNCH** to respond to the question. **SEN. LYNCH** said the rules would not be changed for

Missoula to acquire its water system. If they consolidated, they would be under the same rules, showing and proving necessity as they are now as a city.

REP. S. RICE asked **Arvid Hiller** if Missoula has approached him on purchasing Mountain Water and are unable to agree on a price. **Mr. Hiller** said it has been a 10 year, one way conversation. The owner has insisted that the company is not for sale. **REP. S. RICE** asked who the owner of Mountain Water was and if he owned several water companies. **Mr. Hiller** said the owner is H. H. Wheeler Jr., Downey, California. It is not a California owned company. Mr. Wheeler Jr. owns three other water companies.

Closing by Sponsor:

SEN. LYNCH stated if Butte-Silver Bow has to purchase their water company and there is no mechanism to do it, he has no idea what will happen. SB 261 will help make a smooth transition if that day should come. He asked that **REP. D. BROWN** carry the bill.

HEARING ON SJR 3

Presentation and Opening Statement by Sponsor:

SEN. GAGE, Senate District 5, Cut Bank, stated SJR 3 is a resolution to request a study of consolidation of counties and positions within counties.

Proponents' Testimony:

Riley Johnson, National Federation of Independent Business, stated in 1989, individuals in Helena became interested in the consolidation of counties. There are people who would like answers to the consolidation of counties. Their survey showed 51% in favor of consolidation.

Gordon Morris, Montana Association of Counties, said it made more sense, from a Commissioner's perspective, to endorse the study proposal. The results would be beneficial and pave the way for some changes in county government.

Opponents' Testimony: None

Questions From Committee Members:

REP. SIMPKINS stated the Legislature cannot mandate the consolidation of counties. It has to be done with the vote of the people in the adjacent counties and they must have 51% vote of the people involved; and he asked **SEN. GAGE** to respond. **SEN. GAGE** stated the bill doesn't indicate that the Legislature is going to consolidate counties. The bill is asking for a study of the consolidation of counties. **REP. SIMPKINS** expressed concern that people will get the wrong impression that the Legislature should take action.

REP. BROOKE asked **Gordon Morris** how a County Commissioner compares to being a lobbyist. **Mr. Morris** said it is comparable. **REP. McCAFFREE** asked what percentage of tax dollars does the county government spend. **Mr. Morris** said counties spend approximately 22 1/2 cents of every tax dollar. The schools get approximately 75 cents, the counties get slightly lower than the 22 1/2 cents, and the cities get the balance.

Closing by Sponsor:

SEN. GAGE stated the study committee could report to the Legislature what areas need to be reorganized. It will be beneficial for the Legislature to know this.

EXECUTIVE ACTION ON HB 939

Motion: **REP. S. RICE MOVED HB 939 DO PASS.**

Discussion:

REP. S. RICE stated the HB 939 is an urban reforestation bill. She requested that the committee pass the bill unamended so it can be taken directly to Appropriations. There is another source of funding available so they don't have to dip into the Resource Indemnity Trust Fund. **REP. NELSON** said the reason there was no opposition to HB 939 was because the title doesn't betray the source of funding. **REP. D. BROWN** said because of the additional funding, he would like to see it go to Appropriations. **REP. SIMPKINS** said under the Federal Grant Program, this bill would not have any effect on it.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB 224

Motion/Vote: REP. DARKO MOVED SB 224 BE CONCURRED IN AND PLACED ON CONSENT CALENDAR. Motion carried unanimously.

EXECUTIVE ACTION ON SB 102

Motion/Vote: REP. DARKO MOVED SB 102 BE CONCURRED IN AND PLACED ON CONSENT CALENDAR. Motion carried unanimously.

EXECUTIVE ACTION ON SB 160

Motion/Vote: REP. STICKNEY MOVED SB 160 BE CONCURRED IN AND PLACED ON CONSENT CALENDAR. Motion carried unanimously.

EXECUTIVE ACTION ON SB 261

Discussion:

REP. D. BROWN asked the committee not to hold SB 261 very long. He felt that there is no amendment acceptable to the bill. If

there is an amendment attached the Senate will not take it back. It would kill any opportunity for Butte-Silver Bow to deal with its water company problem. He asked for swift consideration of SB 261 at the next meeting.

Motion: **NO ACTION WAS TAKEN ON SB 261.**

ADJOURNMENT

Adjournment: 5:50 P.M.

Diana Wyatt
DIANA WYATT, Chair

Lois O'Connor
LOIS O'CONNOR, Secretary

DW/lo

HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT COMMITTEE

ROLL CALL **DATE** 3-11-91

NAME	PRESENT	ABSENT	EXCUSED
Rep. Paula Darko	X		
Rep. Jessica Stickney, Vice-Chair	X		
Rep. Joe Barnett	X		
Rep. Arlene Becker	X		
Rep. Vivian Brooke	X		
Rep. Dave Brown	X		
Rep. Brent Cromley	X		
Rep. Tim Dowell	X		X
Rep. Budd Gould	X		
Rep. Stella Jean Hansen	X		
Rep. Harriet Hayne	X		
Rep. Ed McCaffree	X		
Rep. Tom Nelson	X		
Rep. Jim Rice			X
Rep. Sheila Rice	X		
Rep. Richard Simpkins	X		
Rep. Norm Wallin	X		
Rep. Diana Wyatt, Chair	X		

CS05LOCGOV.MAN

DATE 3-11-91
HB SB261

TESTIMONY OF ARVID M. HILLER
VICE-PRESIDENT AND GENERAL MANAGER OF
MOUNTAIN WATER COMPANY
MISSOULA, MONTANA
IN SUPPORT OF

SENATE BILL 261

HOUSE OF REPRESENTATIVES LOCAL GOVERNMENT COMMITTEE

MARCH 11, 1991

Madam Chairman, Ladies and Gentlemen of the Committee,

My name is Arvid Hiller. I am appearing before this Committee as a resident of the Community of Missoula and Vice-President and General Manager of Mountain Water Company.

For your information I have attached my written testimony presented to the Senate Local Government Committee in hearing on February 12, 1991. That testimony will give you the background and reasons for Mountain Water's interest in this legislation. This attachment includes not only my testimony but also a letter delivered to Mayor Kemmis of the City of Missoula.

I am here to support this legislation as it was amended by the Senate Local Government Committee. Subsequent to our testimony and that of others, the bill was amended and passed **unanimously** by the Committee and sent to the Senate floor where it was also passed unanimously **49** to **0**.

As originally introduced the bill would have allowed the water supply districts created in the bill to condemn privately owned water supply systems without any showing in court that taking over the private system was in the public interest. That was patently unfair and contrary to normal condemnation laws which have served this state well for the last 100 years. However,we were very gratified that the Senate Committee listened to our concerns and amended out those portions of this bill.

We do support this legislation as now amended because we realize the Butte Silverbow consolidated government needs to have the same condemnation rights as all other government entities.

For those reasons listed above and in my attached testimony we feel Senate Bill 261 needs to be given your support as presently amended and passed by the Senate.

Thank You

TESTIMONY OF ARVID M. HILLER
VICE-PRESIDENT AND GENERAL MANAGER OF
MOUNTAIN WATER COMPANY
MISSOULA, MONTANA
IN OPPOSITION TO

SENATE BILL 261

SENATE LOCAL GOVERNMENT COMMITTEE
FEBRUARY 12, 1991

Madam Chairman, Ladies and Gentlemen of the Committee,

My name is Arvid Hiller. I am appearing before this Committee as a resident of the Community of Missoula and Vice-President and General Manager of Mountain Water Company, a privately owned Montana Corporation that has as its only business the responsibility of serving potable water to approximately 50,000 Missoula residents. I have lived my entire life (42 years) in the community. Of those 42 years I have spent the last 21 employed in the utility industry. The last 11+ years I have been an officer and employee of Mountain Water Company.

Throughout the last 11 years the City of Missoula has continually taken a position of claiming that they should own the water system. They have spent considerable time and money (nearly $500,000) in Montana District Court and the Montana Supreme Court. Their efforts to show the court that they should own the private water company have failed. The Courts have unanimously determined that the City has not shown by a preponderance of evidence that City ownership is a necessity for the public good. This has all been done in spite of the fact that the City of Missoula was offered the opportunity to buy the water system in 1979 prior to the Montana Power Company selling the system to Mountain Water. At that time the city declined the opportunity and said they didn't think they wanted the responsibility.

I have always been perplexed by the City's desire to own our Company, <u>more now then ever.</u> The reasons for my concerns are listed below.

1. Throughout the Court hearings the city has never argued that we give bad service. In fact they complimented us.
2. We not only paid $8,000,000 for the system we have also invested nearly $8,000,000 for much needed replacement and improvements to the system.
3. In property taxes alone we have paid nearly $3,000,000.
4. Our annual payroll of $1,000,000 is spent in and supports the local economy.
5. Over the past 3 years we have spent $300,000 on ground water protection. These efforts have centered on:
   a. Identification of possible sources of contamination.
   b. Participation in a local task force to create a program to protect our water.
6. Over the past 6 months we have contracted with a Helena engineering firm(Hydrometrics) to assist us and the

local governmental agency in designing and implementing a Wellhead/Groundwater protection plan for the Missoula aquifer. This is the first program of its type in Montana and the State Water Quality Bureau has said they will probably use our program as a model for a State Wellhead Protection program.

Throughout the past 11 plus years we have been complimented by all of the State and local agencies which have oversight of our company's performance and actions. The State Water Quality Bureau has said we are a very proactive and responsible company. The Missoula City-County Health Department has stated that we are a pleasure to deal with because we recognize our responsibilities and deal with them in an expeditious and professional manner. The Montana Public Service Commission recognizes us as a well managed and efficiently operating company. The City of Missoula has always said they know we give excellent service. It also needs to be recognized that we give this excellent service with rates to our consumers that are near the lowest in the State. We do this in spite of the fact that we, unlike municipally owned systems, pay our fair share of taxes.

The current Mayor of Missoula and I have pledged to each other that we will work together for the common good of our community. There are many areas in our community that can benefit from a cooperative effort between government and private enterprise. My company and I are committed to taking a proactive stance as it relates to protection of the community's water. **The Mayor of Missoula knows this.** For this reason, if the Mayor is asked and he responds as he did to me on January 15th this year, he will say "No, I don't have any problem with the present management or ownership of Mountain Water Company." He will ask, however, "what will this community do if the present ownership of the water system should decide to sell its interest to another company with an irresponsible approach to the water system." Our first response has been, there are many agencies which ensure that any private water company exercises their duties in the best interest of their consumers. Those being, the E.P.A., State Water Quality Bureau, Missoula City- County Health Department and the Montana Public Service Commission and, of course, ultimately, the Courts.

Even given all this protection to the community's water system, Mountain Water Company felt that it would be appropriate to alleviate the City of Missoula and the Mayor's concerns if we offered them an opportunity to purchase the water system in the event the current ownership should ever decide to sell. Therefore on January 15, 1991, I had a conversation with Mayor Kemmis, followed up by a letter to him (copy attached), and told him that our owner and management were willing to give the City an **irrevocable document which would give the City of Missoula <u>first right of refusal</u> to purchase the company in the event the present ownership decided to sell the company.**

In light of the aforementioned offer I fail to see the reason for this latest effort by the Mayor and City of Missoula to incorporate language into Butte legislation that says (page 16, line 25; page 17, lines 2-8; and page 18, lines 6-13), in essence, that a government entity can take ownership of a private company

without showing that it is necessary for the public good. I feel the built-in protections afforded by the present condemnation laws in Montana are far too important to be changed and provide for something that is already taken care of by an agreement offered by our company to the City of Missoula.

I realize that this Senate Bill originated in Butte Silverbow and, for their situation, the first 15 pages of it may be needed. I think the purposes for which the bill was writen can still serve Butte's needs without including the sections mentioned in the previous paragraph. For that reason Mountain Water Company supports the removal of those portions addressing the rights of a water district to take a private company without proving necessity.

Thank You.

EXHIBIT 4
DATE 3-11-91
HB SB361

MOUNTAIN WATER COMPANY

P. O. Box 4826 • 1345 West Broadway • Missoula, Montana 59806 • Phone (406) 721-5570

ARVID M. HILLER
V.P. and General Manager
(406) 721-5570

January 15, 1991
Hand delivered
January 16, 1991

Mayor Dan Kemmis
City of Missoula

Re: Our conversation January 15, 1991, 10:15 a.m.

Dear Mayor:

Thank you for the opportunity to visit with you this morning. This letter is a confirmation of Mountain Water Company's commitment to the proposal I discussed with you.

It is evident to me from our past conversations and your reaffirmation and acknowledgement this morning that you know the present management and ownership of Mountain Water Company have a long-term commitment to groundwater protection and supply of the best quality water possible to the Missoula Community. In light of your confidence in Mountain Water Company, we recognize your concern that, should ownership change to a private company which is not so responsible, to the Missoula Community that the water supply may be adversely affected.

As I stated to you this morning, in an effort to put this continual "Condemnation Issue" to rest forever, Mountain Water Company is willing to draft an irrevocable document that would give the City of Missoula the **first right of refusal** to purchase the company in the event the present ownership decided to sell the company.

Please do not interpret this letter as an intention to sell Mountain Water Company. We feel that we have the resources, experience, and expertise to continue the fine service and delivery of quality water at a fair price to the Missoula Community, now and for years to come.

We are interested in getting together with you and the council to delineate this document forthwith. Please contact me upon your return from Helena.

Very truly yours,

Arvid M. Hiller

Arvid M. Hiller
Vice-President,
General Manager

EXHIBIT 2
DATE 3-11-91
HB SB 261

TESTIMONY OF DOUGLAS R. HARRISON
CUSTOMER SERVICE SUPERVISOR
MOUNTAIN WATER COMPANY AND
ALDERMAN WARD 4, CITY OF MISSOULA
IN SUPPORT OF

SENATE BILL 261

HOUSE OF REPRESENTATIVES LOCAL GOVERNMENT COMMITTEE

MARCH 11, 1991

Madam Chairman, Ladies and Gentlemen of the Committee,

My name is Doug Harrison. I am an employee of Mountain Water Company, which is a private water utility supplying most of the City of Missoula. I am also serving my second term on the Missoula City Council.

The purpose of my participation here today is to encourage you to pass this bill as it has been amended. In its original form, this bill had the potential of impacting many of my constituents and the people of this state in a very negative way. I will leave with you the written testimony given before the Senate committee that deals with my specific concerns.

The Senate Local Government Committee, by a unanimous decision, deleted that portion of the bill with which I was concerned. As amended, this bill passed the Senate by a 49 to 0 vote.

I would urge you to concur with the Senate's finding and pass this bill as amended.

Thank you

TESTIMONY OF DOUGLAS R. HARRISON
CUSTOMER SERVICE SUPERVISOR
MOUNTAIN WATER COMPANY AND
ALDERMAN WARD 4, CITY OF MISSOULA
IN OPPOSITION TO

SENATE BILL 261

SENATE LOCAL GOVERNMENT COMMITTEE
FEBRUARY 12, 1991

Madam Chairman, Ladies and Gentlemen of the Committee,

My name is Doug Harrison. I am an employee of Mountain Water Company, which is a private water utility which serves most of the City of Missoula. I am also serving my second term on the Missoula City Council. The portion of the Bill I would like to address deals only with Pages 16, 17, and 18, beginning with Section 34.

Today I am not speaking on behalf of the Government of the City of Missoula. I do speak on behalf of my constituents from the Ward I have represented for over 5 years, as well as many, many people from across the City of Missoula, who are adamantly opposed to this portion of the Bill.

The idea of a simple majority vote of a city council as being conclusive on the issue of necessity is chilling, even to those of us who are supposedly in control.

I am not anti-government. There are different times and situations where governments need to use their powers of Eminent Domain. The laws which are in place protect the people from a government that may be too aggressive and they protect governmental bodies from taking actions which would later prove to be rash! A simple majority vote subjects this very important issue to the politics of the hour and does not serve the best interest of a community as a whole. If a government needs to use this power of Eminent Domain, it is not unreasonable that they prove it is necessary for the public good in order to do so.

The current law has been a good law for the State of Montana and that is why it has been on the books for so long.

Being on the City Council, I understand the need for local governments to have certain powers. However, I also recognize there needs to be a balance. The current State law dealing with Eminent Domain protects us from ourselves and gives us that balance. I would encourage you to delete this portion of the bill,

not only for the good of the people of Missoula, but for everyone in the State of Montana.

While I am here, I would like also to give an employee's perspective. Mountain Water Company was in court for several years fighting condemnation by the City of Missoula. After extensive testimony, both the lower court and the Montana Supreme Court, by unanimous decision, ruled that it **was not** in the best interest of the citizens of Missoula to allow this condemnation.

After so much pressure for so long, the employees felt great relief and continued the excellent service for which they are known. When the employees heard about the proposal before you today, they were shocked. Morale has nose-dived. They can not believe the City might be able to change the rules to suit their particular situation. These employees are not political--they do not know how to fight something like this. Most have never been to the Legislature. These are working people, the majority born and raised in Montana, who just do not have the time or experience necessary to appear here and argue about what's fair. These people are extremely concerned about what might happen here. That makes me angry!

This little portion stuck at the end of this bill is not in the best interest of people of Missoula, not in the best interest of the employees affected by this legislation, and it can not be in the best interest of the people of the State of Montana. I believe you will do what is right.

Please delete this portion of the bill!

Thank you.

EXHIBIT 6
DATE 3-11-91
HB SB 261

TESTIMONY OF

WILLIAM EVAN JONES
PARTNER

GARLINGTON, LOHN & ROBINSON
MISSOULA, MONTANA

IN OPPOSITION

TO A PORTION OF

SENATE BILL 261

SENATE LOCAL GOVERNMENT COMMITTEE

FEBRUARY 12, 1991

Nearly 70 years ago, our Supreme Court, commenting on condemnations by municipalities, stated:

> "The power to condemn private property against the will of the owner is a stringent and extraordinary one, based upon public necessity or an urgent public policy."

State, ex rel. McLeod v. District Court, 67 Mont. 164 (1923).

Proposed Senate Bill 261, with its insidious language, seeks to allow a municipality to condemn not just bare land or something similarly innocuous, but rather an operating business, involving people and jobs, without a showing of public necessity.

In a water company such as Mountain Water of Missoula, the employees are the most important asset of the business. They should be considered in determining the public interest.

Those people who seek to condemn Mountain Water in Missoula have lost before fair and impartial judges again and again.

They lost a lengthy trial.

They lost an evidentiary hearing.

They lost three times before the Montana Supreme Court.

They have cost the taxpayers of Missoula hundreds of thousands of dollars, not only for their own misguided efforts, but also for the efforts of Mountain Water, whose fees and expenses the taxpayers were required to pay.

EXHIBIT 6
DATE 3-11-91
HB SB261

In virtually every type of condemnation proceeding, including highways and power lines, state law requires the condemning authority to show public necessity.

There is no reason why those people associated with the City of Missoula should be entitled to special, discriminatory legislation.

There is no reason they should be entitled to accomplish through the legislature what they cannot accomplish through fair and impartial trials and hearings before the courts.

Attached to this brief statement is one of the many opinions rendered by judges during the City of Missoula's attempt to condemn the Mountain Water system. This opinion, rendered January 19, 1988, by the district judge in jurisdiction, sets forth with great clarity the reasons why public necessity is so significant.

Thank you.

WILLIAM EVAN JONES

EXHIBIT 7
DATE 3-11-91
HB SB 261

TESTIMONY OF SHERMAN V. LOHN
PARTNER, GARLINGTON, LOHN & ROBINSON
MISSOULA, MONTANA
IN OPPOSITION TO

HOUSE BILL 261

HOUSE LOCAL GOVERNMENT COMMITTEE
JANUARY 26, 1989

I am appearing before this Committee as a resident of the City of Missoula and as an attorney for Mountain Water Company, a Montana corporation, in opposition to House Bill 261. This bill seeks to amend a portion of an ancient Montana law which has its genesis in enactments made by the territorial government, the law remaining basically unchanged and unused. The proposed amendment is, on its face, a simple one. It merely adds to a list of special items regarding streets, alleys, waterways, sewers, ditches, etc., the acquisition of a water supply system under the provisions of another section of Montana, which is also an ancient and unused provision. The kicker is contained in the existing statute, a portion not amended, which states in part "The ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking . . . " (Emphasis supplied).

The City of Missoula in 1984 filed a condemnation action against Mountain Water seeking to condemn the entire operation of the privately owned water system. The attempt has been unsuccessful because, after 4 years of active litigation, the City has been unable to establish that the proposed condemnation is in the public interest or is necessary. There have been three appeals to the Supreme Court, numerous hearings in District Court, a lengthy trial and a subsequent evidential hearing. The case is once again pending on appeal in the Supreme Court, which has in its past decisions made it very clear that for the condemnation to succeed it must be in the public interest, and the City simply has not been able to meet that burden.

By this proposed amendment the City seeks to achieve the result it has been unable to secure to date under existing law, simply by providing that no showing of necessity or public interest is necessary.

The concept of condemnation is an awesome one -- private property can be taken by the government against the wishes of the owner. This concept is accepted, though often with protest, because the government can show a need. However, couple the taking by the government as an absolute without any showing

that the taking is necessary or in the public interest and the concept is down right frightening.

In this state, the Montana state government does not have the power which this amendment would grant to every City Council in the State. The County governments do not have such power. It is accepted that each governmental body must establish need based on public interest. By this piece of legislation, the City of Missoula, apparently admitting that it cannot establish a public need, seeks to change the law for its benefit.

It should be noted that most condemnation actions with which we are familiar involve highways, power lines, gas lines, access roads, etc. where the necessity is clear and the general public will be benefitted. However, this amendment deals with an operating business, involving people and jobs, not just a piece of land with some improvements. A business in which the employees are to be considered as the most important asset and are vitally involved in determining the public interest.

Mountain Water serves a substantial number of County residents who certainly would not be benefitted by a City acquisition but would be deprived of the protection of the Public Service Commission as to rates, charges, service complaints, fire protection etc.

The Rural Fire District representing a great number of Missoula County residents protested the attempt of the City to acquire the system asserting that such an acquisition would substantially harm the District.

As has been noted, a substantial tax base would be lost by School Districts, the County and the State.

Recognizing that this forum is not one in which we should re-litigate a public interest issue which the City lost in Court, but believing that you should be advised of specific findings of the District Court, there is attached to this statement a copy of "Additional Findings". I would suggest that you might find this document of interest to understand more fully why the City wants to condemn a business, not only against the will of the owner, but without the necessity of establishing that it is in the public interest.

I would suggest to you that in addition to establishing a bad precedent in condemnation actions, the adoption of this amendment in its present form may well grant new powers of condemnation to all City Councils beyond that which might presently be contemplated. The original law is not divided into sections (a) through (d), as is contained in this bill. As a consequence the act has been interpreted not to give a City unlimited authority to condemn for "(d) any other municipal and

EXHIBIT 7
DATE 3-11-91
HB SB 261

public use". If such an interpretation was correct, the City surely would not need this enactment. As redesigned, the passages of this bill would read:

> (1) The City or Town Council has power to condemn private property for:
>
> (d) Any other municipal and public use --

This result would hardly be acclaimed by the public in general as being either necessary nor in the public interest.

In 1923 our Supreme Court, commenting on condemnations by municipalities stated:

> The power to condemn private property against the will of the owner is a stringent and extraordinary one, based upon public necessity or an urgent public policy.
>
> State ex rel. McLeod v. District Court, 67 Mont. 164.

Do not by the adoption of this bill, a piece of special legislation, wipe out a doctrine that has been established for so long and has protected the public so well.

Thank you.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Local Government COMMITTEE BILL NO. SB 261

DATE 3-11-91 SPONSOR(S) Lynch

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
4603-Garnett Missoula 59803 Jack Trayler	Montana School Transportation Associa.	261		✓
Arvid M. Hiller	Mountain water Co.	261		✓
Dorothy Fraser	Montana Eagle Forum	261		✓
Doug Harrison	Mountain Water Co.	261		✓
JAMES A. LOFFTUS	MONTANA FIRE DIST ASSN	261		✓
Sherman V Solum	Attorney —	261		✓
Dan Kemmis	City of Missoula	261	✓	
Jim Nugent	City of Missoula	261	✓	
Alec Hansen	MLCT	261		✓
Ted Doney	Mountain Water Co.	361		—

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By DIANA WYATT, CHAIR, on March 13, 1991, at 3:15 p.m.

ROLL CALL

Members Present:
Diana Wyatt, Chair (D)
Jessica Stickney, Vice-Chair (D)
Joe Barnett (R)
Arlene Becker (D)
Vivian Brooke (D)
Dave Brown (D)
Brent Cromley (D)
Paula Darko (D)
Tim Dowell (D)
Budd Gould (R)
Stella Jean Hansen (D)
Harriet Hayne (R)
Ed McCaffree (D)
Tom Nelson (R)
Sheila Rice (D)
Richard Simpkins (R)
Norm Wallin (R)

Members Absent: Jim Rice (R)

Staff Present: Bart Campbell, Legislative Council
Lois O'Connor, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON SB 367

Presentation and Opening Statement by Sponsor:

SEN. CRIPPEN, Senate District 45, Billings, stated SB 367 would enact a law that would authorize the Yellowstone County Commissioners to donate the land and building known as the Yellowstone Art Center to the Yellowstone Art Center Foundation. The foundation is a private, nonprofit entity. The Yellowstone Art Center is housed in the old county jail. The Center would like to expand, remodel, and obtain land that is adjacent to the building. The county owns the building. In order for the county to donate the Center, they must have a specific act in statute. The County Commissioners do not have the authority. The donation

revenue sharing. **SEN. BROWN** said it was part of a program to put decision making back into the state and local governments levels. States don't get money from federal revenue sharing for this purpose anymore.

Closing by Sponsor:

SEN. BROWN asked that **REP. BOHARSKI** carry the bill.

EXECUTIVE ACTION ON SB 437

Motion/Vote: REP. CROMLEY MOVED SB 437 BE CONCURRED IN AND PLACED ON CONSENT CALENDAR. Motion carried unanimously.

EXECUTIVE ACTION ON SB 261

Motion: REP. D. BROWN MOVED SB 261 BE CONCURRED IN.

Motion: **REP. DARKO** moved to reinsert the language the Senate removed on Pages 17 and 18.

Discussion:

REP. D. BROWN stated the Senate wouldn't take the bill back with the amendments. Butte-Silver Bow must have this bill in order to do what needs to be done to the water system. Because Butte-Silver Bow is a consolidated city-county government, they were left out of the option of eminent domain like every other county has. **REP. S.J. HANSEN** stated Missoula didn't take the water system because there wasn't any problems, they went because there was a problem. It was a mismanagement on the part of the officials. Missoula could consolidate. Once they consolidated they could have the same power Butte has. **REP. GOULD** stated that Missoula had its problems with the water system when the city had a problem with the sewer system. It was the city that caused the problem for Mountain Water. **REP. DARKO** stated that neither Butte nor Missoula own their water systems. What will happen is that the water systems will sell to the city when they can no longer deal with the problems that were resulting from being unable to handle it. That is what happened in Butte. The city has the obligation to take it over. The bill with the amendment would allow the city to take the system over before they have to put much money into it. **REP. SIMPKINS** said that Butte has recognized their problem as territorial, a government entity problem, which must be resolved before they can negotiate with the water company. It should be left as written.

Vote: Motion to amend SB 437 failed 1 to 17 with **REP. DARKO** voting aye.

Motion: **REP. S.J. HANSEN** moved to amend SB 437. **EXHIBIT 4**

Discussion:

REP. D. BROWN said that in the Missoula versus the water company court case, the city couldn't show necessity and opposed the amendment. **REP. S.J. HANSEN** said that in talking to the lawyer for Missoula, they said the term "water supply" was too broad and it didn't specifically include drinking water supply. **REP. GOULD** stated the sponsor does not want the bill to be amended so that Butte can take care of their water problem. If Missoula has a problem in two years, they can bring in their own bill.

Vote: Motion to amend SB 437 failed 2 to 16 with **REPS. DARKO** and **S.J. HANSEN** voting aye.

Vote: Motion that SB 437 be concurred in carried 17 to 1 with **REP. S.J. HANSEN** voting no.

EXECUTIVE ACTION ON SJR 3

Motion: REP. DARKO MOVED SJR 3 BE CONCURRED IN.

Discussion:

REP. McCAFFREE spoke in opposition to SJR 3. There are laws that give local people paying the taxes the opportunity to consolidate. They have chosen not to do that. The bill will end up costing money and accomplishing nothing. **REP. DARKO** said the Legislature funds interim studies and they have to rank the studies. This gives people the opportunity to vote on it. **REP. SIMPKINS** said that he discussed with **Bart Campbell** about adding another part of the Constitution to it. **Mr. Campbell** said the Constitution says that if the Legislature was going to change county boundaries it must be put to the vote of the people that would be affected. **REP. SIMPKINS** said the people should decide what type of government they want. This bill would allow a study that would tell them what the Legislature thinks they ought to do. We should get out of county business.

Vote: Motion that SJR 3 Be Concurred In failed on a tie vote. **EXHIBIT 5**

Motion/Vote: REP. SIMPKINS MOVED SJR 3 BE TABLED. Motion carried 10 to 9. **EXHIBIT 6**

EXECUTIVE ACTION ON SB 221

Motion: REP. GOULD MOVED SB 221 BE CONCURRED IN.

Discussion:

REP. STICKNEY said she has heard opposition from many constituents. There is a law that allows consolidation of counties. **REP. McCAFFREE** said the bill was brought about by a

HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT COMMITTEE

ROLL CALL **DATE** 3-13-91

NAME	PRESENT	ABSENT	EXCUSED
Rep. Paula Darko	X		
Rep. Jessica Stickney, Vice-Chair	X		
Rep. Joe Barnett	X		
Rep. Arlene Becker	X		
Rep. Vivian Brooke	X		
Rep. Dave Brown	X		
Rep. Brent Cromley	X		
Rep. Tim Dowell	X		
Rep. Budd Gould	X		
Rep. Stella Jean Hansen	X		
Rep. Harriet Hayne	X		
Rep. Ed McCaffree	X		
Rep. Tom Nelson	X		
Rep. Jim Rice		X	
Rep. Sheila Rice	X		
Rep. Richard Simpkins	X		
Rep. Norm Wallin	X		
Rep. Diana Wyatt, Chair	X		

CS05LOCGOV.MAN

3-13-91
SB 261

Amendments to Senate Bill No. 261
Third Reading Copy

Requested by Representative Hansen
For the Committee on Local Government

Prepared by Bart Campbell
March 13, 1991

1. Title, line 14.
Following: "DOMAIN"
Insert: "; AND AMENDING SECTION 7-13-4403,"

2. Page 18, line 19.
Following: line 18
Insert: "**Section 35.** Section 7-13-4404, MCA, is amended to read:

"7-13-4404. Use of eminent domain powers to acquire water supply system. (1) In case agreement is not reached pursuant to 7-13-4403, then the city or town shall proceed to acquire the plant or water supply, including drinking water supply, under the laws relating to the taking of private property for public use.

(2) Any city or town acquiring property under the laws relating to the taking of private property for public use shall make payment to the owner or owners of the plant or water supply, including drinking water supply, of the value thereof legally determined, within 6 months from and after final judgment is entered in the condemnation proceedings.""
Renumber: subsequent section

9:30 AM
3/14/91
MN

HOUSE STANDING COMMITTEE REPORT

March 14, 1991

Mr. Speaker: We, the committee on Local Government report that Senate Bill 261 (third reading copy -- blue) be concurred in .

Signed: _____

Diana Wyatt, Chairman

Carried by: Rep. D. Brown

SENATE BILL NO. 261

INTRODUCED BY LYNCH, HALLIGAN, JACOBSON, STIMATZ, PIPINICH, FRITZ, DAILY, WHALEN, HARRINGTON, QUILICI, KADAS, BROOKE, DRISCOLL, COCCHIARELLA, MENAHAN, MCCARTHY, REAM, SQUIRES, HARPER, MANNING, PINSONEAULT, PAVLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW RELATING TO CONSOLIDATED GOVERNMENT AND MUNICIPAL WATER SUPPLY SYSTEMS; PROVIDING THAT A CONSOLIDATED LOCAL GOVERNMENT MAY SUPPLY SANITARY SEWER OR STORM SEWER SERVICES OR WATER TO A DISTRICT; AND PROVIDING THAT A CONSOLIDATED LOCAL GOVERNMENT OR A CITY OR TOWN COUNCIL MAY PURCHASE A PRIVATE WATER SUPPLY SYSTEM OR TAKE THE SYSTEM BY EMINENT DOMAIN; PROVIDING THAT THE PASSAGE OF AN ORDINANCE OR RESOLUTION PROPOSING THE TAKING IS CONCLUSIVE ON THE ISSUE OF NECESSITY FOR THE TAKING OF A SYSTEM; AND AMENDING SECTION 7-13-4403, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** **Definitions.** As used in [sections 1 through 34], the following definitions apply:

(1) "District" means a district authorized in [section 2] to provide a system.

(2) "Local government" means a consolidated form of local government provided for in Title 7, chapter 3, parts 11 through 13.

(3) "System" means a public water supply, sanitary sewer system, storm sewer system, or any combination of water supply, sanitary sewer, or storm sewer systems.

NEW SECTION. **Section 2.** **Authorization to create district.** Whenever the public convenience and necessity may require, in order to construct a water supply, sanitary sewer, or storm sewer system within a local government that would serve the inhabitants of the local government, the governing body may create a district to provide the system.

NEW SECTION. **Section 3.** **Resolution of intention to create district.** (1) Before creating a district, the governing body shall pass a resolution of intention to create the district.

(2) The resolution must designate:

(a) the proposed name of the district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands to be included within the district, giving the boundaries of the district;

(d) the general character of the system and its proposed location;

(e) the name of the engineer who is to have charge of the work; and

(f) the estimated cost of the district.

NEW SECTION. **Section 4.** **Sufficiency of description in resolution of intention.** In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it is sufficient to briefly describe the work or the district and to refer to the resolution of intention for further particulars.

NEW SECTION. **Section 5.** **Notice of resolution of intention upon concurrence -- hearing.** (1) The governing body shall give notice of the passage of its resolution of intention to create the district.

(2) The notice must be published for 10 consecutive days in a daily newspaper published nearest to the place where the district is to be created. The governing body shall also cause a copy of the notice to be posted in three public places within the boundaries of the district. A copy of the notice must be mailed to every person, firm, or corporation or the agent of the person, firm, or corporation owning property within the proposed district, at his last-known place of residence, upon the same day the notice is first published or posted.

(3) The notice must describe the general character of the improvement or improvements proposed to be made, state the estimated cost, and designate the time when and the place where the governing body will hear and pass upon all protests that may be made against the making or maintenance

of the improvements or the creation of the district. The notice must refer to the resolution on file in the office of the local government clerk for the description of the boundaries.

NEW SECTION. **Section 6.** **Right to protest.** (1) At any time within 30 days after the date of the first publication of the passage of the resolution of intention, any owner of property liable to be assessed for the system may make written protest against the proposed system.

(2) The protest must be in writing and be delivered to the county clerk, who shall endorse on the protest the date of the receipt.

NEW SECTION. **Section 7.** **Sufficient protest to bar proceedings.** If protests against the proposed system are received from the owners of 50% or more of the area in the proposed district, further proceedings may not be taken by the governing body.

NEW SECTION. **Section 8.** **Hearing on protest.** (1) At the next regular meeting of the governing body after the expiration of the time within which protest may be made, the governing body shall hear and pass upon all protests, and its decision is final and conclusive.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings, property owned by local government and school

districts is considered the same as any other property in the district.

(3) The governing body may adjourn the hearing from time to time.

NEW SECTION. **Section 9. Resolution creating district -- power to order improvements.** (1) Before ordering any of the proposed improvements, the governing body shall pass a resolution creating the district in accordance with the resolution of intention introduced and passed by the governing body.

(2) The governing body has jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest is found by the governing body to be insufficient; or

(c) when a protest is overruled.

NEW SECTION. **Section 10. Governing body to administer district.** (1) The members of the governing body are ex officio commissioners of the district formed under the provisions of [sections 1 through 34] and have jurisdiction over the system within the district. The governing body is responsible for the proper functioning and maintenance of

the system.

(2) The governing body is responsible for the condition and maintenance of all publicly owned roads, streets, alleys, land, parks, or other thoroughfares within the boundaries of the district affected by the construction or maintenance of the structures under control and jurisdiction of the district.

NEW SECTION. **Section 11. Change of boundaries -- limitations.** (1) The governing body may by resolution make changes in the boundaries of a district as they consider reasonable and proper but may not delete any portion of the proposed area if the deletion will create an island of included or excluded lands.

(2) The governing body may not delete any portion of the proposed area that is contributing or may reasonably be expected to contribute to the pollution of any watercourse or body of water in the proposed area.

(3) For the purpose of subsection (2), it is conclusively presumed that an area that is within 1,500 feet of a proposed or existing sanitary sewer is contributing to the pollution of a watercourse in the proposed area.

NEW SECTION. **Section 12. Applicable provisions of laws relating to rural improvement districts.** The provisions of 7-12-2101, 7-12-2106, 7-12-2107, 7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153,

7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), 7-12-2169, and 7-12-2171 through 7-12-2174 pertaining to rural improvement districts apply to [sections 1 through 34] unless in conflict with the provisions of [sections 1 through 34].

NEW SECTION. **Section 13. Adequate records to be maintained.** The records of the district pertaining to the collection of the operation and maintenance tax levied and the records of the district pertaining to expenditures for construction of the system must be kept and maintained in the office of the treasurer of the local government where the district is located. These records must include but not be limited to a list of individual property that is delinquent in payment, together with the name of the owner or owners of the property.

NEW SECTION. **Section 14. Assessment of costs.** To defray the cost of installing and maintaining the system under the provisions of [sections 1 through 34], the governing body shall adopt the following method of assessment:

(1) The governing body shall assess the entire cost of the improvements against the entire district.

(2) Each lot or parcel of land assessed in the district is to be assessed with that part of the whole cost that its area bears to the area of the entire district, exclusive of

streets, avenues, alleys, and public places.

NEW SECTION. **Section 15. Status of federal property within district.** Whenever any lot, piece, or parcel of land belonging to the United States fronts upon the proposed work or improvement or is to be included within the district the governing body shall in the resolution of intention declare that the lots, pieces, or parcels of land must be omitted from the assessment to be made to cover the cost and expenses of the work or improvement, and the cost of the work or improvement in front of the lots, pieces, or parcels of land must be paid by the local government from its general fund.

NEW SECTION. **Section 16. Restriction on assessments following change of boundaries.** Nothing in [section 11] permits the assessment of the cost of the system against the lands remaining in the district after a boundary change at a higher rate per square foot than the rate per square foot that would have been assessed if the entire cost of the improvements as estimated in the resolution of intention had been assessed against each lot and parcel of land included within the boundaries of the district as described in the resolution of intention unless a new resolution of intention to recreate the district is adopted and a hearing is held on the new resolution after notice as required for the original resolution of intention.

NEW SECTION. **Section 17.** **Resolution to assess and levy tax for making improvements.** (1) To defray the cost of making improvements in the district, the governing body shall by resolution levy and assess a tax upon all property in the district created for the purpose of the system by using as a basis for the assessment the method provided for by [sections 1 through 34].

(2) The resolution must contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment when made and the day when the payment becomes delinquent.

(3) The resolution, signed by the governing body, must be kept on file in the office of the local government clerk.

NEW SECTION. **Section 18.** **Term of assessment for costs of construction.** The payment of the assessment to defray the cost of constructing any improvements in the district may be spread over a term of not more than 20 years, with payment to be made in equal installments.

NEW SECTION. **Section 19.** **Notice of resolution to assess and levy tax for making improvements -- protest.** (1) A notice, signed by the local government clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the clerk and is subject to inspection, must be published at least once in a newspaper published nearest to where the

special improvement is to be made.

(2) The notice must state the time and place in which objections to the final adoption of the resolution will be heard by the governing body.

NEW SECTION. **Section 20.** **Hearing on protest.** (1) The time for the hearing on protest must be not less than 5 days after the publication of the notice required by 7-13-126.

(2) At the time fixed, the governing body shall meet and hear all objections and for that purpose may adjourn from day to day. The governing body may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the clerk of the local government, must be delivered to the local government treasurer within 2 days after its passage.

NEW SECTION. **Section 21.** **Assessments and other charges as lien.** A special assessment made and levied to defray the cost and expenses of the work for the system, together with any percentages imposed for delinquency and for cost of collection, are a lien upon the property upon which the assessment is made and levied, from and after the date of the passage of the resolution levying the assessment. The lien may only be extinguished by payment of the assessment, with all penalties, costs, and interest.

NEW SECTION. **Section 22.** **Charges for services.** (1) The governing body may by ordinance or resolution establish just

and equitable rates, charges, and rentals for the services and benefits directly or indirectly afforded by a system operated by, controlled by, and under the jurisdiction of a district formed under [sections 1 through 34].

(2) The rates, charges, and rentals must be as nearly as possible equitable in proportion to the services and benefits rendered and may take into consideration the quantity of water supplied, the amount of sewage produced and its concentration, water pollution qualities in general, and the cost of disposal of sewage and storm waters.

NEW SECTION. **Section 23. Authorization to use federal funds.** The governing body may apply for and receive from the federal government, on behalf of the district, any money that may be appropriated by congress for aiding in local public works projects. The governing body may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects and repay the loan out of the money received from the tax levy provided for in this part.

NEW SECTION. **Section 24. Charges for costs when federal funding is sought.** Notwithstanding any other section of [sections 1 through 34] or a limitation imposed in [sections 1 through 34], when the governing body has applied for funds pursuant to [section 23], the governing body may adopt a system of charges and rates to require that each

recipient of services pays its proportionate share of the costs of operation, maintenance, and replacement and to require industrial users of services to pay that portion of the cost of construction of the system that is allocable to the industrial user.

NEW SECTION. **Section 25. Resolution to establish service charges -- hearing -- limitations and tax levy.** The governing body may, subject to the provisions of Title 69, chapter 7, by resolution and after public hearing:

(1) establish the rates, charges, and rentals in amounts sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) establish an additional charge for the operation and maintenance of a system and a plant; and

(3) levy and assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements in the district, not in excess of 2 mills on each dollar of taxable valuation, to provide sufficient revenues for the reserve fund in the amounts necessary to meet the financial requirements of the fund as described in [sections 28 through 33].

NEW SECTION. **Section 26. Hearing and notice on tax levy for operation and maintenance.** (1) Not less than 30 days prior to the date of making the levy for operation and

maintenance of the system, the governing body shall hold a public hearing on the resolution.

(2) Notice clearly setting forth the subject matter of the hearing must be given by the governing body by publication as provided in 7-1-2121, and notice must also be posted in three public places within the district.

NEW SECTION. **Section 27. Preparation and filing of district budget.** (1) Not less than 30 days prior to the date of the public hearing on the resolution, the governing body shall prepare and file in the office of the clerk of the local government in which the district is located and in the office of the governing body a complete, detailed budget for operation and maintenance of the system, showing all income and expenditures for the year prior to the hearing and all estimated income and expenditures for the next ensuing year in which the levy is assessed.

(2) The provisions of law relating to local government budgets and expenditures must be complied with by the district.

NEW SECTION. **Section 28. Authorization for reserve fund.** The governing body may, in order to secure prompt payment of any district bonds issued in payment of the cost of improvements for the district and the interest on the bonds as it becomes due, create, establish, and maintain by resolution a fund, to be designated as the "reserve fund",

for each issue of bonds.

NEW SECTION. **Section 29. Sources of money for reserve fund.** (1) For the purpose of providing money for the reserve fund, the governing body may in its discretion, from time to time, transfer to the reserve fund from the operation and maintenance fund of the district an amount as may be considered necessary or as may be agreed upon with the holders of the bonds.

(2) Whenever there is money in the bond fund that is not required for payment of a bond of the district or interest on the bond, as much as is necessary to pay the loan referred to in [section 31] must, by order of the governing body, be transferred to the reserve fund.

NEW SECTION. **Section 30. Transfers to reserve fund considered as loans.** The amount or amounts transferred under [section 29] must be considered as loans from the operation and maintenance fund to the reserve fund.

NEW SECTION. **Section 31. Loans from reserve fund to bond fund as lien.** (1) Whenever a loan is made to the bond fund from the reserve fund, the reserve fund has a lien for the amount of the loan on:

(a) the land within the district that is delinquent in the payment of its assessments;

(b) unpaid assessments and installments of assessments on the district, whether delinquent or not; and

(c) money coming into the bond fund to the amount of the loan, together with interest on the loan from the time it was made at the rate or percentage payable by the bond or of interest on the bond for which the loan was made.

(2) If after all the bonds of the district have been fully paid and all money remaining in the bond fund has been transferred to the reserve fund, there still remains a debt from the district to the reserve fund, the governing body may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off the loan to the reserve fund.

NEW SECTION. **Section 32. Limitation on repayment of loan to reserve fund.** Nothing in [sections 28 through 33] permits the repayment of a loan to the reserve fund at any time unless all interest accrued on the bonds has been fully paid and all principal agreed to be paid in accordance with the redemption schedule as may be provided in the resolution or resolutions authorizing the bonds has been paid.

NEW SECTION. **Section 33. Covenants to use and maintain reserve fund.** (1) In connection with the issuance of district bonds, the governing body may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the reserve fund to the fund maintained for the payment of the bonds in amounts sufficient to make good any deficiency in the bond and interest accounts to the

extent that money is available; and

(b) to provide money for the reserve fund pursuant to the provisions of [sections 22 and 25] by establishing and collecting rates, charges, and rentals for services and benefits in amounts sufficient to provide net revenues in excess of the current costs of operation and maintenance of the system and sufficient to maintain a balance in the reserve fund as the governing body may agree to and undertake.

(2) The undertakings and agreements authorized by subsection (1) are binding upon the local government as long as any bonds or any interest on the bonds remains unpaid.

NEW SECTION. **Section 34. Acquisition of private water supply system.** (1) If a franchise has been granted to or a contract made with any person or corporation and the person or corporation has established or maintained a system of water supply or has valuable water rights or a supply of water desired by the district for supplying the district with water, the governing body granting the franchise, entering the contract, or desiring the water supply shall, by the passage of a resolution, give notice to the person or corporation that it desires to purchase the plant, franchise, or water supply of the person or corporation.

(2) The governing body passing a resolution as provided in subsection (1) may:

{a} purchase the plant, franchise, or water supply upon terms agreed to by the parties; or.

{b}(3) IN CASE AGREEMENT IS NOT REACHED IN ACCORDANCE WITH SUBSECTION (2), THE GOVERNING BODY MAY take the plant, franchise, or water supply by eminent domain IN ACCORDANCE WITH TITLE 70, CHAPTERS 30 AND 31.

{3}--A-resolution-that-authorizes-the-taking-of--private property--for--purposes-of-supplying-the-district-with-water is-conclusive-as-to-the-necessity--for--the--taking;--except with-respect-to-a-water-supply-system-used-for-irrigation-of agricultural--crops--or--for--livestock-purposes.-The-taking must-conform-to-and-be-conducted-as-provided--in--Title--70; chapters-30-and-31.

Section-35.--Section-7-13-4403;-MCA;-is-amended-to-read:

"7-13-4403.--Acquisition-of-private-water-supply-system.

{1}--It--is--provided--that-whenever If a-franchise-has-been granted-to-or-a-contract-made-with-any--person--or--persons; corporation;-or-corporations-and-such the-person-or-persons; corporation;---or--corporations;--in--pursuance--thereof--or otherwise;-have has-established-or-maintained--a--system--of water--supply--or-have has-valuable-water-rights-or-a-supply of-water-desired-by-the-city-or-town-for-supplying-the--city or--town--with--water;--the--city--or-town-granting-such the franchise; or-entering-in-such the--contract;--or--desiring such the-water-supply-shall;-by-the-passage-of-an-ordinance;

give--notice--to-such the-person-or-persons;-corporation;-or corporations-that-it-desires--to--purchase--the--plant; and franchise; and or--water--supply--of--such the--person-or persons;-corporation;-or-corporations.

{2}--The-city-or-town-shall-have-the-right-to-so passing an-ordinance-as-provided-in-subsection-{1}-may:

{a}--purchase-the-plant-or-water-supply-upon-such--terms as agreed-to-by-the-parties-agree;-or

{b}--take--the--plant;--franchise;--or--water--supply-by eminent-domain-if-the-plant;-franchise;-or-water--supply--is to-be-used-for-a-municipal-water-system.

{3}--An--ordinance-that-authorizes-the-taking-of-private property-for-purposes-of-supplying-the--city--or--town--with water--is--conclusive--as--to--the-necessity-for-the-taking; except-with-respect--to--a--water--supply--system--used--for irrigation--of-agricultural-crops-or-livestock-purposes.-The taking-must-conform-to-and-be-conducted-as-provided-in-Title 70;-chapters-30-and-31."

NEW SECTION. **Section 35.** Codification instruction. [Sections 1 through 34] are intended to be codified as an integral part of Title 7, chapter 13, and the provisions of Title 7, chapter 13, apply to [sections 1 through 34].

-End-